Public Utilities
FORTNIGHTLY

VOL. XIV; NO. 10 NOVEMBER 8, 1934

The British Grid

System permitting generation of electricity in a limited number of stations

England's backward development and use of current for light and power said by the author to be the result of governmental interference, the constant threat of compulsory municipal purchase of plants, and of government control of power companies.

BY WILLIAM H. ONKEN, JR.

To appreciate the National Power System of Great Britain, one should be conversant with the antecedent conditions prompting its establishment. Incredible as it may seem, for more than forty years the generation and distribution of electricity in Great Britain has been permitted to develop in a way which is at variance with all our fundamental conceptions of economic power production. This might seem to indicate that whereas British public utility operators are always able, they are not always wise. However, no such aspersion can be cast at them, nor can the lack of electrical development in Great Britain be attributed to engineering causes.

It cannot be denied, however, that in power production and distribution, the British outlook is inclined to be more provincial than national, for reasons which will subsequently appear. Hence the multiplicity of small stations as high in first cost as they are uneconomic in operation. If, as has been claimed, Great Britain has

a genius for small shops, she also has one for small stations. Of 584 power stations reporting to the Electricity Commissioners in 1924, more than 40 per cent of them developed less than 1,000,000 kilowatt hours and only 25 per cent of them generated more than 10,000,000 kilowatt hours annually.

EXAMPLES of statewide systems comparable in size to all of England, and of far-flung interconnected networks covering wider areas than all of Great Britain, were to be found in the United States twenty years ago. Nor have British engineers been unappreciative of the freedom with which American power station development was explained to them and data interchanged and published.

As a matter of fact, during the last quarter of a century, the rest of the world has repeatedly sent emissaries to the United States to study our systems of electric supply; for not only have we antedated all other countries in high-tension superpower networks, but in no other country in the world is electricity produced from steam more cheaply and more abundantly.

Why then, with American and Canadian experience and practice at her beck and call, should Great Britain be so backward in the use of electricity? The answer is not hard to find. It can be compressed into two words, "government interference." Her privately owned public utilities were always threatened with the power of compulsory purchase by the municipality, and her power companies with state control.

As has been so aptly said by her great poet and dramatist:

> The evil that men do lives after them;
> The good is oft interred with their bones.

It was the incisive and decisive Joseph Chamberlain who hobbled the electric light and power industry of Great Britain at its birth. Because of his bitter feeling for the privately owned and prosperous water, gas, and railway companies, in his Electric Lighting Act of 1882, he laid the foundation for the municipalization of all public utilities. Moreover, he put such a straight jacket of legal restrictions about the budding electric light and power industry that private enterprise was discouraged from engaging in the business.

THE boundaries of a borough constituted the limits of an electric lighting area. The companies could not interconnect or amalgamate for mutual advantage. Generating stations had to be erected within the municipal area of supply. Moreover, all electrical conductors had to be placed underground. None could be above ground; along, over, or across any street without express consent from the local authority; and even then, any police court magistrate could order its removal.

The difficulties of privately operating and financing any new enterprise thus "cabined, cribbed, and confined" are readily apparent; and from the viewpoint of social service the result was naturally disastrous. Restrain private enterprise and stagnation inevitably follows. That this is so, the experience of the electric light and power industry in Great Britain amply proves.

Notwithstanding that the act of 1882 was subsequently modified, up to the time of the World War or after thirty years of operation, the com-

bined electric public utilities of Great Britain produced only approximately 2,000,000,000 kilowatt hours. This was about equal to the amount of electricity generated in that year at Niagara Falls. What a showing for a country richly endowed with coal and teeming with people and industry, and which gave to the world such outstanding electrical geniuses as Faraday, Maxwell, Kelvin, Swan, Ferranti, Hopkinson, and others!

EVEN today, under the impetus of the new system, there are only about 4,000,000 houses out of 10,400,000 wired for electricity in Great Britain; whereas it is reliably estimated that there are some 9,643,000 users of gas. As a matter of fact there is no country in the world in which the gas industry is so fully developed as it is in Great Britain. Gas is available to and used by ninety-five per cent of her population. The gas public utilities, it should be noted, are for the most part privately owned and operated; whereas two thirds of the supply of electricity in Great Britain comes from municipal systems.

The per capita use of electricity in Great Britain is little above 200 kilowatt hours contrasted with more than 600 kilowatt hours per capita in the United States. Eventually the system of electricity supply for domestic service will be standardized at 230 volts, 50 cycles; but at present only 314 of the 669 distributors of electricity conform to that standard.

FROM a public utility viewpoint, the World War gave Great Britain quite a jolt. Not until then, when power was imperatively needed by her industries for the manufacture of munitions and supplies, did the hopelessly chaotic condition and inadequacy of the country's electricity supply system become apparent. Coupled with the enormous demand for commodities was the ever-increasing drain of men and women for military and auxiliary service; and the immediate problem was where to find the men and women for the work which urgently needed to be done.

Less than three months after the

Comparative Amounts of Electricity Sold

GREAT BRITAIN *				UNITED STATES			
*Year**	*Population (Millions)*	*Kw. hr. Sold*	*Kw. hr. per Capita*	*Year*	*Population (Millions)*	*Kw. hr. Sold*	*Kw. hr. per Capita*
1922–23	43.0	3,762	88	1922	110.4	36,500	330
1923–24	43.3	4,468	103	1923	112.2	42,650	380
1924–25	43.6	5,097	117	1924	114.0	45,150	396
1925–26	43.8	5,606	128	1925	115.7	50,250	434
1926–27	44.0	5,868	133	1926	117.3	56,089	478
1927–28	44.2	7,003	158	1927	118.8	61,251	516
1928–29	44.4	7,800	176	1928	120.3	66,988	557
1929–30	44.5	8,666	195	1929	121.7	75,294	619
1930–31	44.7	9,074	203	1930	123.0	74,906	609
1931–32	44.8	9,501	212	1931	124.1	71,902	579

NOTES:
**Fiscal Year* in Great Britain: ends 31st of March (or May 15th) for public authorities; previous 31st of December for companies.
Sources: For Great Britain: Annual Reports of the Electricity Commissioners; for U. S. A.: Edison Electric Institute.

war began, there were ominous indications that existing industrial methods would not suffice for an adequate supply of munitions. The government was compelled to intervene. "Output," said Lloyd George, "is everything," and to achieve it, all factories and workshops were put under governmental control. If ever opportunity knocked at the door of the electric power industry of Great Britain, it was then; but how unprepared it was to meet it.

GREATER London, for example, had fifty separate systems of electrical supply from seventy generating stations; with twenty-four different distribution voltages and ten different frequencies. Appliances in use on one side of a street served by one utility were not usable on the other side of the same street served with electricity by another utility. With such an excessive number of small power houses necessarily expensive in first cost and in operation, an abundant supply of cheap power was out of the question. There was an habitual waste of half a million tons of coal yearly in the stations of London alone.

Obviously an industry in such a deplorable state could not meet the exigencies of the war. Clearly something had to be done; but in keeping with British tradition and custom, it was not done in a hurry. Competent committees considered the situation soberly, discreetly, and dispassionately, and in 1926 Stanley Baldwin, then Prime Minister, following in the main the recommendations made by the Weir Committee of 1925, introduced the Electricity Supply Act of 1926.

It is interesting to note in passing, that the Weir report proposed "not a change of ownership; but the partial subordination of vested interests in generation to that of a new authority for the benefit of all, and this only under proper safeguards and in a manner which will preserve the value of the incentive or private enterprise."

WHAT is now popularly known as the "grid" had its genesis in the Electricity Supply Act of 1926 which created the Central Electricity Board. To this board was assigned the task of concentrating the generation of electricity in a limited number of sta- and low operating costs; to erect a tions "selected" for their efficiency high-tension main transmission system to interconnect these stations and link existing regional systems into the national grid; and finally to standardize the national supply at a frequency of 50 cycles, which is the frequency prevailing throughout Europe. This latter change alone, it is estimated, will cost $100,000,000.

The Central Electricity Board does not own a single generating station nor has it any supervision directly or indirectly over local distribution or the rates charged for service to the ultimate consumer. It coöperates with the electricity supply industry and makes arrangements with the owners of the selected stations for the operation and, where required, for the extension of their stations so as to generate such quantity of electricity at such rates of output and at such times as the board may direct.

The owners of these stations are required to operate them under the supervision of the board, and the

The Hobbling of the English Electric Light and Power Industry

"It was the incisive and decisive Joseph Chamberlain who hobbled the electric light and power industry of Great Britain at its birth. Because of his bitter feeling for the privately owned and prosperous water, gas, and railway companies, in his Electric Lighting Act of 1882, he laid the foundation for the municipalization of all public utilities. Moreover, he put such a straight jacket of legal restrictions about the budding electric light and power industry that private enterprise was discouraged from engaging in the business."

board purchases their entire output. The board is obligated to supply the entire requirements of all authorized undertakers, and this supply is provided from the grid. Thus the grid is merely a "power pool," supplied with energy from the selected stations located at various points, and supplying undertakers scattered throughout the area. Most large utilities in the United States adopted this operating principle many years ago. The non-selected stations are to be shut down when supply becomes available from the grid, but this will not impose any hardship upon their owners since supply from the grid is not mandatory unless the cost to the undertaker is lower than his own production cost.

The grid consists of 4,000 miles of 132,000-volt, 50-cycle steel tower line erected at a cost of approximately 27,000,000 pounds Sterling ($135,000,000) and extending from the Caledonian canal in upper Scotland to the English Channel. Included in the 4,000 miles of 132,000-volt transmission is 15 miles of oil-filled underground cable in the London district working under a tension of 132,000 volts.

From this grid the Central Electricity Board supplies at wholesale and at rates of a uniform type with varying prices, the requirements of the electric public utility companies of Great Britain. The price the board pays for power is based on the cost of production at each station. The price at which it sells is a 2-part rate comprising a demand and an energy charge.

The national power system embraces a series of power districts so conceived and planned that they fit into each other to form a coördinated and unified whole. It devolved on the Electricity Commissioners appointed by the Minister of Transport to delimit the boundaries of the various districts and the Central Electricity Board has selected a relatively small number of key stations for permanent operation and will close the others.

At the beginning of 1934, there were 122 key stations selected and provision made for the construction of thirteen more.

Ten main areas of supply or power districts have been designated, namely, North Scotland, Central Scotland, South Scotland, North-East England, North-West England and North Wales, Mid-East England, Central England, East England, South-East England, and South-West England and South Wales. Plans for all regional districts except North Scotland have been completed and six of them are now operating under the grid. In the completed scheme there will be 273 transforming and switching stations or grid points of supply to authorized distributors of electricity.

THE Electricity Supply Act of 1926 specified that the rate at which energy is sold by the board to the authorized undertakers shall be a 2-part rate, including a demand charge and an energy charge. The board has put into effect "grid tariffs" which conform to this requirement. The grid tariffs are uniform within each area and vary slightly between areas. In the nine areas in which the grid is now complete, six tariffs have thus far been announced.

The demand component is much the same in all of them, being identical in five areas and slightly lower in the sixth. In general, it may be said that the demand charge decreases for increments of demand in excess of the base demand established in 1932. The size of the increments decreases with the size of the base demand. This demand charge is subject to an increase for power factories below 85 per cent, lagging, at the time of the occurrence of the maximum demand. The demand charge is also subject to variation with changing rate of taxes on selected stations. In addition to the demand charge, there is an energy charge which is of the order of 0.2 pence (4 mills) per kilowatt hour and this component of the rate is subject to a variation with fuel cost.

A penalty is imposed for power

Comparative Electric Light and Power Costs

GREAT BRITAIN * Cost per Kw. Hr., Cents					UNITED STATES Cost per Kw. Hr., Cents				
Fiscal Year	*Lighting*	*Power*	*Traction*	*All Sales*	*Year*	*Lighting*	*Power*	*Traction*	*All Sales*
1924–25	8.52	2.17	2.63	3.55	1924	5.70	1.60	1.02	2.74
1925–26	7.76	2.03	2.30	3.35	1925	5.74	1.50	0.99	2.74
1926–27	7.29	2.32	2.38	3.57	1926	5.55	1.50	0.97	2.71
1927–28	6.89	1.91	2.01	3.15	1927	5.45	1.47	0.96	2.71
1928–29	6.17	1.74	1.78	2.93	1928	5.37	1.41	0.94	2.66
1929–30	5.81	1.66	1.64	2.81	1929	5.13	1.38	0.93	2.57
1930–31	5.42	1.65	1.57	2.81	1930	4.97	1.42	0.93	2.66
1931–32	5.14	1.60	1.48	2.76	1931	4.92	1.48	0.94	2.75

NOTES:

**Fiscal Year* in Great Britain: ends 31st of March (or May 15th) for public authorities; previous 31st of December for companies.

Average cost per kw. hr. sold: English pounds converted into U. S. dollars at the gold standard rate of $4.875 per pound.

Sources: For Great Britain: Annual Reports of the Electricity Commissioners; for U. S. A.: Edison Electric Institute.

factors less than 85 per cent and for each kilowatt hour supplied during the year, a charge of 0.196*d* is made, subject to a coal clause. The latter stipulates:

> At the end of each year the total cost of fuel consumed in that year at all the selected stations in the area of the Scheme, shall be divided by the total number of tons of fuel so consumed; the average cost of the fuel per ton so obtained shall be multiplied by 10,000 and divided by the average gross thermal value of the fuel so consumed expressed in British Thermal Units per pound of fuel as fired. If the sum so obtained shall be more or less than 12*s*, the running charge shall be increased or reduced in that year by 0.001*d* for each penny by which such sum shall be above or below 12*s*."

At the outset, attention should be directed to the fact that while the Electricity Supply Act of 1926 is designed to insure the economic generation of electricity on a national basis, the distribution of electricity is still in the hands of six hundred and more utility companies each of which has a monopoly of supply and each one of which is at liberty to develop or not to develop its exclusive territory.

Thus there are at present in highly industrialized Great Britain housing 45,000,000 souls in an area about half the size of California and generating only a trifle more electricity than is generated in the metropolitan area of New York, 385 municipal systems, 276 electric light and power corporations, 3 joint electricity authorities, and 5 joint boards; or a total of 669 purveyors of electric service. Nor do these reach all the houses in their respective territories. Birmingham, for instance, has distribution mains in only 700 out of its 1,550 miles of streets, and Manchester has mains in 406 out of 765 miles. London still has 38 different local authorities and 14 companies supplying electricity on different systems and at varying rates.

It is difficult to compare the operations of the electricity supply systems of one country with those of another, as, for example, Great Britain and the

Comparative Costs of Fuel-using Electric Plants

GREAT BRITAIN *				UNITED STATES			
Fiscal Year	*Capacity Factor*	*Pounds Coal per kw. hr.*	*Av'g Cost per kw.*	*Calendar Year*	*Capacity Factor*	*Pounds Coal per kw. hr.*	*Av'g Cost per kw.*
1924–25	18.5%	2.55	$115	1924	31.1%	2.17	$131
1925–26	17.1%	2.43	$105	1925	31.1%	2.02	$129
1926–27	17.0%	2.33	$104	1926	31.4%	1.91	$126
1927–28	18.4%	2.16	$103	1927	29.9%	1.79	$122
1928–29	18.3%	2.04	$102	1928	29.1%	1.73	$122
1929–30	18.0%	1.97	$97	1929	32.1%	1.67	$119
1930–31	18.0%	1.86	$96	1930	29.5%	1.58	$117
1931–32	18.3%	1.78	$95	1931	27.5%	1.51	$120

NOTES:

**Fiscal Year* in Great Britain: ends 31st of March (or May 15th) for public authorities; previous 31st of December for companies.

Capacity factor: Relation between actual output of all enterprises to theoretical output if entire plant capacity worked continuously throughout year.

Average cost per kw. of installed capacity: English pounds converted into U. S. dollars at the gold standard rate of $4.875 per pound.

Sources: For Great Britain: Annual Reports of the Electricity Commissioners; for U. S. A.: Edison Electric Institute.

United States. Cost may be set against cost, output against output, consumption against consumption, and still give an erroneous impression. One must take into consideration the differences in mechanical and physical conditions between the countries compared; differences in the standards of living; differences in the costs of raw or manufactured material, etc.

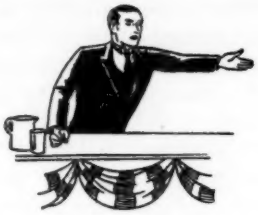
It does little good to convert pounds into dollars and draw conclusions. Normally the income per capita in the United States is almost twice that in Great Britain and the standard of living is also higher. Labor, especially domestic labor, is plentiful and cheap in Great Britain; hence the greater use of labor-saving appliances in the United States.

Coal costs less in the United States than in England; but its transportation, owing to greater distances, costs very much more. Water is plentiful in the United States and not so plentiful in Great Britain, hence the employment, in connection with condensers, of huge and unsightly cooling towers at power houses in the interior. These often utilize sewage water in order to secure enough water to condense the exhaust steam. It costs less per kilowatt for steam stations in Great Britain than it does in the United States chiefly because in a free trade country raw material is cheaper. The climate is cool and damp and cables are laid in the moist earth and not drawn into vitrified tile ducts as in the United States. Heating of cables does not, therefore, offer such operating hazards in Great Britain. Fully one fourth of the systems in Great Britain generate at nonstandard frequency. Our systems have been standardized for years at 60 cycles, and that without compulsion.

On the other hand underground electric distribution is more general in Great Britain than in the United States because power houses are located in the cities and the cities are more compactly built. Of course, when the engineers for economic reasons decided on 132,000 volts for the grid transmission it meant overhead lines, a practice to which Great Britain had long been averse. However, this aversion has been largely overcome and the overhead line has taken its proper place in Great Britain as the universal means for transmitting electrical energy over long distances and for distributing electricity in sparsely populated areas. Our standard house voltage is 115; theirs is 230.

In British distribution practice, the poles are kept upright without guys; and are anchored only at angles. Rural lines have conductors arranged vertically one above the other. British power houses do not equal American steam stations in economy of operation. English operators strive for thermal efficiency while American operators never lose sight of "dollar economy" and the difference is appreciable.

The statistics given here should, therefore, be interpreted in the light of the preceding observations. However, taken as presented without interpretation, they reveal the extent to which the United States surpasses Great Britain in electrical development and in cheapness of electric service, despite our higher costs of labor and our higher standards of living,



The "Grid" an Old Principle in the U.S.A.

"THE grid is merely a "power pool," supplied with energy from the selected stations located at various points, and supplying undertakers scattered throughout the area. Most large utilities in the United States adopted this operating principle many years ago. The nonselected stations are to be shut down when supply becomes available from the grid, but this will not impose any hardship upon their owners since supply from the grid is not mandatory unless the cost to the undertaker is lower than his own production cost."

and the heavy taxes our public utilities pay.

It will be some years before the British grid is complete and in smooth operation. While it is cutting its teeth it will naturally experience operating difficulties and come in for criticism. Already the Labor Party is seeking its overthrow. The Central Electricity Board was empowered to borrow $300,000,000 of which $135,000,000 has been spent on the transmission grid and another $100,000,000 will be required in standardizing frequency. The latter cost will be spread over the entire industry, standard and nonstandard alike. Some provision must also be made for apparatus and equipment junked. Measured by results, conservative England is not yet greatly impressed with the grid. Increased outputs are attributable to other causes. The financial report for 1933 was very poor, indicating heavy losses.

APPARENTLY too much is expected of the grid. The task given to the Central Electricity Board was not that of building fresh from present knowledge and technical practice. Its job is to utilize to best advantage existing generating stations as a basis for an improved and expanded electricity supply system. Experienced operators did not expect the grid to reduce the cost of lighting service in large cities, and as for rural service, the grid can mean little. The difficulties inherent in economically tapping a 132,000-volt grid for limited rural supply, while not insurmountable are none the less perplexing.

As every public utility man knows, service costs exceed greatly the costs of production; so much so that were

the latter nil, the ultimate consumer would benefit but little. There's the rub. For the distribution and marketing of electricity is still in the hands of those who have thus far shown little facility or aptitude along commercial lines, otherwise Great Britain would be today leading and not lagging in the use of electricity. In the keeping of the six hundred and odd authorized distributors of electricity rests the fate of Great Britain's grid. There is a surplus of electricity now, which will not be disposed of unless the local municipal distributing companies evince greater enthusiasm and enterprise in the business.

IN view of the criticism aroused by the Tennessee Valley Authority's method of acquiring public utility properties, the plan followed in Great Britain offers food for thought.

The Electric Lighting Act of 1888 under which the electric light and power companies of London operated, prescribed that at the end of forty-two years the local authority might purchase the property of the companies within its area. This meant that in the years preceding possible purchase, electrical development within the district would cease. The companies naturally would not incur further capital commitments or make any reduction in rates.

Faced with this situation, the London County Council took a far-sighted and statesman-like view of the matter. It did not exercise its option to purchase; but chose rather to extend the franchises of the companies until 1971 on certain conditions. These provided for the transfer in 1971 free of charge of all the property of the electric light and power companies involved to a Joint Electricity Authority; for the amalgamation of the various companies; for the adoption of a sliding scale whereby the dividends payable by each company would be regulated by the price of electricity sold by the company, and for the administrative and financial independence of the companies subject however to the control by the Joint Electricity Authority with appeal to the Electricity Commissioners, in regard to technical developments, capital expenditures, and the disposal of surplus energy.

THE rates for service are fixed at a price which will yield sufficient revenue to meet all operating expenses including sinking funds, together with dividends on ordinary capital at standard rates, subject to adjustments.

The sliding scale embodies provisions relating to the accumulation of reserve funds; the setting up of contingency or special purpose funds; the limitation of the amounts which may be carried forward each year; the issue of all new capital in the most advantageous form and on the best terms obtainable at the time. The company is allowed to participate in the surplus profits in any year in which the total of the amounts charged for service is less than an amount arrived at by applying the appropriate standard prices to the number of kilowatt hours supplied during the year. This difference is described as "consumers' benefit" and one sixth of the amount may be used for additional dividend for ordinary shareholders and/or for accumulation of reserves.

The Forgotten Man In the Depreciation Controversy

No. 2. Customer's interest in accounting, valuation, and other phases of the problem

In the first article of this series the author analyzed the three usual methods of providing for depreciation (see Public Utilities Fortnightly *of October 25th). In the present and concluding article valuation and other phases of the problem from the customer's viewpoint are considered and the author's conclusions given.*

By LUTHER R. NASH

Although the customer is relieved of excessive charges for depreciation under the sinking-fund method, the uncertainties of useful life remain as a questionable factor. As a practical matter it may well be asked if the average customer cares whether the useful life of the property devoted to his service is ten years or fifty years as long as retirements of such property are always fully provided for at reasonable cost and his service is unimpaired.

As far as the record shows, the customer's interest centers in adequate service and reasonable rates. From this point of view any reserve meeting these requirements is enough. Any larger reserve that would require increases in his rates is excessive. He may be persuaded that more liberal reserves are needed to sustain the company's credit which, in the long run, is necessary to the maintenance of adequate service. He probably would be quite skeptical of reserves, created at his expense, amounting to one third or more of the total investment if he were aware that such reserves were rarely, if ever, drawn down far below their normal level.

This last opinion is that of a number of commissions which have criticized or prohibited such reserves.[8] It is also noteworthy that the Federal income tax authorities are questioning the reserve accumulations which they foresee will result from the straight-line depreciation charges which they

[8] *Re* New York Teleph. Co. (N. J. 1924) P.U.R.1925C. 767; *Re* Chesapeake & P. Teleph. Co. (D. C.) P.U.R.1932E, 193.

have fixed or approved, and are considering closer scrutiny of useful life estimates with a view to reducing these charges as deductions from 1934 income.[9]

A DECISION of particular pertinence to this discussion was handed down on April 30, 1934, by the United States Supreme Court in a case which had been pending for nearly ten years, involving the Illinois Bell Telephone Company.[10] Throughout this period the company's depreciation reserve, accumulated on the straight-line basis, exceeded 25 per cent of the total fixed capital. In connection with property valuation, however, its witnesses had testified that existing depreciation, including nonphysical causes, determined by detailed examination of the property, was less than 10 per cent.

The court concluded that the reserve had been accumulated from excessive charges which to a large extent represented "provisions for capital additions, over and above the amount required to cover capital consumption." The excess of these straight-line charges over those necessary to create and maintain an adequate reserve was found to be enough to justify the findings that the rates fixed by the commission were not confiscatory, although the lower court, without similar consideration of depreciation charges, had found otherwise.

THE separate, concurring opinion of Mr. Justice Butler (in which the cost of property upkeep, whether charged directly to operating expense or through the reserve, is called maintenance) so well summarizes the findings of the case as to warrant the following reproduction of its concluding paragraphs:

> From the foregoing it justly may be inferred that charges made according to the principle followed by the company create reserves much in excess of what is needed for maintenance. The balances carried by the company include large amounts that never can be used for the purposes for which the reserve was created. In the long run the amounts thus unnecessarily taken from revenue will reach about one half the total cost of all depreciable parts of the plant. The only legitimate purpose of the reserve is to equalize expenditures for maintenance so as to take from the revenue earned in each year its fair share of the burden. To the extent that the annual charges include amounts that will not be required for that purpose, the account misrepresents the cost of the service.
>
> The company's properties constitute a complex and highly developed instrumentality containing many classes of items that require renewal from time to time. But, taken as a whole, the plant must be deemed to be permanent. It never was intended to be new in all its parts. It would be impossible to make it so. Expenditures in an attempt to accomplish that would be wasteful. Amounts sufficient to create a reserve balance that is the same percentage of total cost of depreciable items as their age is of their total service life cannot be accepted as legitimate additions to operating expenses. In the absence of proof definitely establishing what annual deductions from revenues were necessary for adequate maintenance of the property, the company is not entitled to have the rate order set aside as confiscatory.

THE foregoing discussion of various methods of providing for retirements may be clarified by an illustration relating to a particular customer who requires special facilities costing $2,000 to provide for his service. He is told that the useful life of these facilities is twenty years and that, in addition to regular rates covering the service and charges on the standard facilities which he utilizes, he must pay a supplemental charge

[9] T. D. 4422, Feb. 28, 1934.
[10] 3 P.U.R.(N.S.) 337, 355.

for amortization of the special investment. It is represented that he is "consuming" one twentieth of this special investment or $100 each year and that he must make this payment for amortization in addition to his regular rates.

If this customer is clearly aware of his own interests as well as his obligations he may protest that the $100 which he is asked to pay during the first year of his service would not be used for its intended purpose for twenty years, and that if he paid the company $26 during that year it would accumulate to the necessary $100 at the end of the twenty years if invested by the company in its own business. If he paid $28 in the second year it also would accumulate to $100 when it was needed. During each of the succeeding years an increasing contribution would be needed but only in the final year would the full $100 be paid.

EITHER the customer or the company might properly object to the complications of such a varying schedule of charges, but the customer might insist that if he paid a uniform amount of $49 each year the company would accumulate the necessary $2,000 to write off his special investment at the end of twenty years.

The contention of the company that the customer would be entitled to rate reductions from time to time because of reductions in rate base incident to increasing reserves, would not appeal to him as being a satisfactory offset to a saving of more than 50 per cent in the depreciation charges which the company proposed to collect. He might hesitate between the alternative present worth and sinking-fund plans, particularly if he expected a substantial increase from year to year in the profits from his business which would justify an increasing schedule of depreciation charges rather than a uniform one. The difference would, however, probably be a negligible proportion of his profits.

This customer, familiar with certain modern, sinister practices, is at first inclined to look upon this straight-line proposition as a "racket," but he discovers that it is endorsed or used by responsible and honest people. Therefore, assuming that there is no such a thing as honest racketeering, he withdraws the implication.

THE customer has a further interest in depreciation accounting. Certain authorities, favoring the straight-line system and apparently believing in the accuracy of its accom-

¶ "THE *present revived interest in straight-line accounting is limited to the regulatory authorities and customers' spokesmen . . . but is shared by certain certified public accountants who have occasion to examine utility records. Such accountants, as well as others who may be inclined to critcize existing utility accounting practices, may not clearly vizualize the distinctive character of public utility service.*"

plishments, have recommended that useful life records be established and maintained through a system of perpetual inventories. Such inventories would have some value in connection with recurrent determinations of the cost of reproduction in that the cost of specially prepared inventories as a basis for such an appraisal would be avoided. While there undoubtedly would be such a saving, the cost of maintaining continuous inventories is substantial and might well exceed the cost of special inventories for valuation purposes if the need therefor was infrequent. It is a recognized principle of accounting system design that continuous records of transactions which are of occasional interest only are to be avoided if the desired information can be developed at lower cost, if or when needed, from subsidiary records. All accounting costs relating to public utilities enter into the cost of service to be paid for ultimately by the customers.

A PERPETUAL inventory used for the purpose of determining useful life history of various property elements in the past may have little significance in relation to the future useful lives of elements even of the same general character as those formerly used, because of continuing refinements leading to greater ruggedness and prolonged usefulness. The property records commonly kept by public utilities and the knowledge of experienced employees with reference to life history should yield as accurate information regarding past experience as will be helpful for the future without burdening customers with the cost of far more elaborate records.

Although not directly related to depreciation charges, the efforts of certain authorities to allocate property and operating costs to rate areas or classes of service also involve substantial costs which customers must bear and which have little permanent value because of constant changes in the extent and distribution of use of the property.

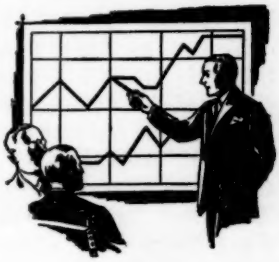
THE present revived interest in straight-line accounting is not limited to the regulatory authorities and customers' spokesmen referred to herein but is shared by certain certified public accountants who have occasion to examine utility records. Such accountants, as well as others who may be inclined to criticize existing utility accounting practices, may not clearly visualize the distinctive character of public utility service.

In the scrutiny of industrial and mercantile enterprises the examiner is impressed with the effect of patent rights, styles, exhaustion of raw materials, competition, and other factors which may limit the useful life of the enterprise and justify the complete amortization of the investment therein in a limited period of years.

No such conditions are found in the field of the conventional public utility. As far as we can foresee, there is no limitation upon its existence or the usefulness of its service. The facilities employed may therefore have an economic life rather than one affected by such factors as have been enumerated as applicable to other enterprises. Furthermore, the useful life of utility facilities can be adjusted within reasonable limits by advancing or postponing retirement dates to

Continuous Records That Are of Only Occasional Interest

"It is a recognized principle of accounting system design that continuous records of transactions which are of occasional interest only are to be avoided if the desired information can be developed at lower cost, if or when needed, from subsidiary records. All accounting costs relating to public utilities enter into the cost of service to be paid for ultimately by the customers."



the advantage of customers as well as the utilities themselves. Retirement charges may therefore be more elastic than in competitive industries and over-accruals or under-accruals for retirements can be adjusted without loss or disturbance of market.

The general policy of utilities has been to make moderate charges for retirement purposes and to accumulate only such limited reserves as judgment has indicated were needed for retirement purposes or financial stability. The extent of such reserves has already been indicated. This policy has permitted lower rates for service than would otherwise have been necessary. These lower rates have encouraged a more extensive use of service, which in turn has reduced the cost of service and permitted still lower rates, all clearly in the interest of customers. The establishment of straight-line depreciation accounting would, as shown herein, increase the cost of service and require such higher rates as permanently to discourage liberal use. So far as the customer is concerned he would have no better or more reliable service, present or future, than he has received in the past.

It is not in the customer's interest or that of the utility that retirement reserves be unduly restricted. We have seen that lower costs and rates lead to expanded service, but it is neither wise nor equitable to assume that future increased income can bear a substantial burden of deferred retirement liability. The customer may, however, fairly seek to avoid charges unsupported by tangible evidence of present or future needs or based on mere "assumed probabilities." He may properly object to being used as the utility's investment banker, to furnish a substantial part of required construction funds.

The foregoing discussion which has been concerned primarily with depreciation annuities has indicated that they are closely related to depreciation as a factor in valuation. It is reasonable that a customer should seek as low a valuation to be used in determining his rates as is consistent with equity and the adequacy of his service. If, however, a low valuation

means less liberality in servicing, line extensions, and attention to efficiency, and saves him only a few cents a month he may not favor undue attention thereto. He will, however, inquire as to the extent to which deductions may properly be made for depreciation in determining his rate base.

One of the common methods of determining present value involves the cost of reproduction of the property. The courts have generally held that depreciation must be deducted from such cost. Logically this method ignores the actual accounting and other history of the company, including the accumulated reserves which have already been discussed. The decisions disclose that the deductions in question must be for depreciation actually existing as determined by examination of the property by competent engineers.[11] Certain of the cases have clearly indicated that such nonphysical factors as obsolescence should not be considered.[12]

DEPRECIATION as defined by the courts unquestionably includes two classes of deterioration; (1), that which has reached a stage needing present attention, sometimes referred to as deferred maintenance, clearly a subnormal condition; (2), partial deterioration including wear, decay, rust, and other physical effects not yet reaching the stage calling for repairs or replacements, this being a normal condition of utility property. Such depreciation can be determined with reasonable accuracy by detailed inspection of the property.

In certain kinds of property such as poles, timber, and underground structures, it may not always be wholly observable, but in most cases the proportion of property involved is small and suitably accurate allowances can be made. In connection with such inspections the customer may properly contend that the maintenance practice of the company should be considered. To the extent that he pays in full for the replacement of small units when they are actually retired, he should not make duplicate payment through retirement annuities. If such property is excluded, as it should be, from retirement provisions, it should also be excluded from the property on which existing depreciation is determined. Such exclusion, however, is not a logical part of a cost-of-reproduction procedure, strictly applied.

SOME further consideration may be appropriate of nonphysical causes of retirement and their relation to both useful life and accrued depreciation. The fixing of an annuity through which provisions for future retirements are accumulated may readily be corrected if found to be in error. A finding of value on which rates are based lacks corresponding flexibility and errors embodied therein are apt to be perpetuated. Clearly, therefore, any evidence on which depreciation deductions are based which may be grossly inaccurate and have little foundation in fact cannot equitably have weight in value determinations. Such conditions surround useful life as affected by nonphysical causes. The courts have held that depreciation from some, at least, of

[11] McCardle *v.* Indianapolis Water Co. (1926) 272 U. S. 400, P.U.R.1927A, 15, 29.
[12] Pacific Gas & E. Co. *v.* San Francisco, 265 U. S. 403, P.U.R.1924D, 817, 827.

these causes does not accrue but rather occurs.[13]

Some further specific illustrations of the operation of nonphysical causes of retirement may be illuminating. Major units in a utility production system such as boilers, turbo-generators, water gas sets, pumps, etc., do not gradually wear out. Certain minor parts, such as, bearings, blading, linings, tubes, packing, etc., do deteriorate but are readily and recurrently replaced. With such replacements these units as a whole are more efficient and operate more reliably after they have ceased to be new. There is no gradual deterioration as a whole nor any determinable limit to their physical usefulness so long as they remain adapted to the required service.

SIMILARLY, important structures do not wear out. Well-constructed buildings, properly maintained, may last for hundreds of years. If they do not survive, it is usually because they are no longer suited to changing requirements or because other economic factors intervene before decrepitude prevails.

Utility distribution systems show in part evidences of deterioration. Poles must be replaced periodically although useful life may be prolonged, sometimes almost indefinitely, by initial expenditure for more substantial types or careful attention to maintenance. Research relating to cast-iron pipe indicates that after a certain initial deterioration the pipe acquires a coating which so protects it from further deterioration that it may last indefinitely in normal soil.

Other minor items of utility equipment have in certain cases gone through substantial changes in type from those which have led to early retirement in the past, and there are present indications of stability in type which make useful life experience of the past of little value for the future. Early retirements of a particular class of units represent the weakest links and give little indication of average usefulness.

ALL utilities use motor vehicles. There is obvious wear and loss in efficiency in such vehicles with passage of time aside from nonphysical factors associated with the development of more convenient or efficient models. It is common practice to retire such vehicles on a mileage basis, and in appraisals deduction for depreciation is frequently made on the basis of the ratio of actual past mileage to total useful mileage.

Another and sometimes more important cause of retirements is inadequacy. A particular unit may be rendering perfectly reliable service as ef-

[13] New York & Q. Gas Co. *v.* Newton (1920) 269 Fed. 277, P.U.R.1921A, 530, 538.

¶ "THE *general policy of utilities has been to make moderate charges for retirement purposes and to accumulate only such limited reserves as judgment has indicated were needed for retirement purposes or financial stability. . . . This policy has permitted lower rates for service than would otherwise have been necessary.*"

ficiently as when new but because of growth in business its capacity becomes too small to justify continued use. Deterioration does not exist; the time of retirement for inadequacy depends wholly upon growth in business, a very uncertain factor. Undoubtedly many utilities early in 1929 planned for the retirement of certain units within two or three years because larger units would then be needed. Today those smaller units are still in operation and may continue so for another five years or more.

These illustrations are given here for the purpose of establishing the impossibility of making any definite finding of loss in value due to nonphysical causes. If because of such uncertainties valuation deductions are restricted, the customer, whose interests are under review, secures correspondingly limited offsetting advantages to justify the straight-line depreciation charges which are being advocated.

It is clearly not appropriate to curtail reserves so that they will provide only for retirement for physical causes. Nonphysical causes predominate in spite of the uncertainties concerning their effect upon useful life. The reserves which a utility creates in excess of needs for physical deterioration should be considered as representing not depreciation but an *accrued liability for retirements*. A retirement reserve may properly make provision for casualties or other things unrelated to depreciation. A clear distinction should, therefore, be made between retirement or depreciation reserves and existing depreciation.

The conclusion from the foregoing consideration of depreciation in connection with cost-of-reproduction valuations is that it would be to the advantage of customers to insist upon restricting retirement annuities to the sinking-fund basis or its equivalent rather than to depend upon uncertain offsets to the larger straight-line annuities associated with depreciated value. A measure of this advantage has already been set up for a typical property.

Many of the commissions have indicated their preference for a rate base determined from the actual investment in the property instead of cost of reproduction or other methods. If accounting history is a factor in the rate base determination the retirement reserve which this history discloses must also be considered. If the record shows the existence of a full depreciation reserve based on useful life, a corresponding deduction for existing depreciation may be made. If, however, the reserve does not exceed that required under the sinking-fund plan, such deduction is not permissible.

A study of utility balance sheets shows very few cases where straight-line depreciation reserves exist. The only significant exceptions are found in the telephone group where many companies have used the straight-line method for twenty years or more. Census reports of the electric power industry show average retirement reserves less than 10 per cent of reported fixed capital. This percentage has been increasing as our knowledge of depreciation economics has improved, but the average reserve is still sub-

Low Valuation and Adequacy of Service

"It is reasonable that a customer should seek as low a valuation to be used in determining his rates as is consistent with equity and the adequacy of his service. If, however, a low valuation means less liberality in servicing, line extensions, and attention to efficiency and saves him only a few cents a month he may not favor undue attention thereto."

stantially less than that accumulated under the sinking-fund method. It, therefore, follows that considering the industry as a whole its property value should not be reduced on account of depreciation, at any rate without an analysis of surplus accounts of specific properties to determine whether or not there was sufficient income in the past to justify further transfers to retirement reserves.

Individual cases, of course, show substantial departures from the national average but cases of reserves in excess of 25 per cent or thereabouts, which would justify some claim for accrued depreciation, are rare. It should again be pointed out that a newly effective program of straight-line annuities does not justify any deduction for accrued depreciation, such deduction being appropriate only after the straight-line program has been in effect during the major part, if not the whole of, a life cycle of property.

The possible extent of the injustice of any other procedure is worthy of consideration. The present investment in depreciable property of electric power companies in the United States is about 90 per cent of the total investment and, therefore, not far from $11,000,000,000. Existing reserves average less than 10 per cent. If we assume that straight-line reserves would in time accumulate to 35 per cent but that up to the present time the total has reached only 30 per cent, it follows that deduction of full straight-line depreciation would involve a destruction or confiscation of property value to the extent of the difference of 20 per cent between existing and straight-line reserves, or $2,200,000,000.

If all component properties conformed to the average, having reserves less than sinking-fund requirements, the extent of confiscation would be, as already shown, the full straight-line computation of depreciation, or about $1,000,000,000 in addition to the amount above stated.

It appears from the foregoing that the situation with respect to depreciation accounting in connection with a valuation based on actual investment is similar to that found under the reproduction method. In neither case does it appear to the advantage of customers to accept the higher annual straight-line charges for depreciation because of the absence of assured offsetting advantages. The actual investment basis of valuation shows a minimum of such advantages.

The history of rate cases decided by the various commissions and courts does not disclose full consistency with the foregoing analysis. There have been many cases of deduction for accrued depreciation from cost of reproduction without regard to existing reserves or a determination of the actual physical condition of the property. There have been relatively few cases in which actual investment has been similarly depreciated. On the other hand, there have been cases in which an undepreciated value has been found without specific consideration of reserves or other pertinent facts. Such decisions indicate that the interrelation of accounting and valuation procedure has often been overlooked.

It is, however, encouraging to find a consistent series of decisions covering a considerable period of years [14] in which sinking-fund annuities have been definitely linked with undepreciated rate bases. This interrelation has been clearly expressed by the public utilities commission of the District of Columbia in the following quotation:

> In the opinion of the commission, the matter of accrued depreciation and deduction therefor, if any, cannot be justly settled independently of the matter of the amounts which the ratepayers annually have paid and are paying (in the rates charged) because of depreciation. The two are in equity inseparably interlinked.[15]

There is a less satisfactory record of the fixing of undepreciated value in connection with retirement reserves not definitely established on a sinking-fund basis but of no greater magnitude. There should be no doubt of the equity of similar treatment in such cases for the reason that earnings of the invested reserve are needed fully as much in such cases as under the assumed more exact sinking-fund method.

The upward tendency in reserve accumulations previously referred to is doubtless due in part to an increasing knowledge of a relatively new subject. The history of the electric power industry covers a period of slightly more than fifty years. During the first half of that period the subject of depreciation was practically unknown, or at least received negligible attention. In the first important case involving rate-making considerations (Smyth *v.* Ames, decided in 1898),[16] the subject of depreciation was not mentioned. In certain earlier decisions of lower courts utilities were denied the right

[14] Monahan *v.* Pacific Gas & E. Co. (Cal. 1915) P.U.R.1916B, 609; *Re* Portland R. Light & P. Co. (Or.) P.U.R.1916D, 976; Lamar *v.* Intermountain R. Light & P. Co. (Colo. 1917) P.U.R.1918B, 86, 100; *Re* Potomac Electric Power Co. (D. C.) P.U.R. 1917D, 563, 689; *Re* United Fuel Gas Co. (W. Va. 1923) P.U.R.1924A, 357, 361; *Re* Capital City Water Co. (Mo.) P.U.R.1928C, 436, 461; *Re* Pacific Teleph. & Teleg. Co. (Cal. 1929) P.U.R.1930C, 481, 510.

[15] *Re* Potomac Electric Power Co. P.U.R. 1917D, 563, 689.

[16] 169 U. S. 466, 42 L. ed. 819.

to make any provision for retirements other than those currently charged to operating expense.[17]

It was not until 1909 that a clear reference to the subject was made by the Supreme Court in the Knoxville Water case,[18] and it is doubtful if it would have had attention then had it not been for questionable claims of the company. In another utility case decided on the same day (Consolidated Gas Company),[19] there is no mention of depreciation. The time within which utilities have had authoritative knowledge of their responsibilities is limited to twenty-five years and there was no concerted attention to this subject during the early part of that period. In 1913 the Interstate Commerce Commission prescribed straight-line depreciation charges applicable to certain parts of the properties of interstate carriers. This requirement is still in effect with the expectation of its being made applicable to all railroad property in the future.

ALTHOUGH various state commissions had prescribed accounting methods for utilities under their supervision, the first uniform systems in general use by local utilities throughout the country were prepared in 1922 and have since been prescribed in most of the states where accounting is regulated. These uniform systems, applicable to electric power, gas, and water companies, provide for the retirement method of accounting, which is therefore the only method in general use by these utilities. Straight-line depreciation accounting and its wider application have been consistently opposed by utility and railroad executives. On the other hand this system has been voluntarily adopted by telephone companies and generally used since 1913.

Telephone service may be distinguished from that of other utilities in the rapid evolution of the facilities used. Within the past generation there have been three distinct changes in types of telephone facilities, including both office and subscribers' equipment. There have also been radical changes in cable design and practice, which cover the major part of telephone circuit investment. In contrast to this the changes in electric power, gas, and water supply equipment within the same period have been less important except as to the size of units employed. Telephone subscribers have, therefore, less occasion to criticize depreciation accounting practices than have other utility customers, with the further consideration that the charges for telephone service are generally believed to be relatively low as

[17] United States *v.* Kansas P. R. Co. (1879) 99 U. S. 455, 459, 25 L. ed. 289.
[18] 212 U. S. 1, 53 L. ed. 371.
[19] 212 U. S. 19, 53 L. ed. 382.

¶ "THE *reserves which a utility creates in excess of needs for physical deterioration should be considered as representing not depreciation but an* ACCRUED LIABILITY FOR RETIREMENTS. . . . *A clear distinction should, therefore, be made between retirement or depreciation reserves and existing depreciation.*"

compared with the value of the service.

THE retirement method has been criticized because of its dependence upon executive or engineering judgment as to the size of reserves, with only secondary consideration of the recurrent contributions thereto. It is claimed that judgment has been and may be unduly swayed by prevailing prosperity or lack of it, and that there is danger of inadequate accumulations and future failures of service. There is merit in such criticisms, and danger that judgment will not always be honestly exercised without undue influence.

This criticism applies to the application of the method rather than its basic principles. If the principles are correct the remedy should be directed at their application rather than the abandonment of the method. As a guide to the corrective methods to be applied it may be pointed out that, in making appropriations for retirement purposes based on judgment, utility executives are influenced primarily by the size of the reserve already existing and, secondly, by the extent of available income as measured by the current prosperity or lack of it of the business. Other considerations are the condition of the physical property and the extent to which important retirements may be required in the near future.

ADJUSTMENT for some but not all of these factors can be made mathematically with close approximation to the ultimate results secured by uniformity in accruals. For example, if the reserve has been accumulated through appropriations of a certain assumed percentage of property or revenues such percentage can be adjusted upward or downward by a suitable correction factor based on the deficiency or excess of the reserve as compared to an established normal. Appropriations may be adjusted in a similar way for deficiency or liberality in income. If appropriations and the accumulated reserve are both determined as percentages of revenue an added element of flexibility is provided in that with curtailment of revenue the reserve percentage increases and appropriations are automatically reduced.

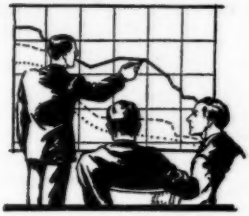
In his book "Public Utility Rate Structures"[20] the author gives a formula in which the above adjustment factors are involved. This formula, in which B, R_n and I_n are normal ratios of retirement annuity, accumulated reserve, and distributable net income to operating revenues, is as follows:

$$X=B-\frac{R-R_n}{K_1}+\frac{I-I_n}{K_2}$$

The base percentages and corrective factors through which, in the long run, an adequate reserve will be maintained, are not definitely stated because they vary with the character of the property. Some more recent computations applicable to existing conventional properties covering a period of years have indicated that the corrective factors, K_1 and K_2, may be smaller than suggested in the book, thereby providing more prompt adjustment.

THE use of revenue as a basis of percentage appropriations for re-

[20] McGraw-Hill Book Co., 1933.



Disadvantages of Straight-line Depreciation Charges

"THE situation with respect to depreciation accounting in connection with a valuation based on actual investment is similar to that found under the reproduction method. In neither case does it appear to the advantage of customers to accept the higher annual straight-line charges for depreciation because of the absence of assured offsetting advantages. The actual investment basis of valuation shows a minimum of such advantages."

tirements has been criticized by various commissions and others as being illogical. It is claimed that a percentage of physical property is more accurate, for the reason that physical property continues to depreciate regardless of the amount of revenue derived therefrom. Such contention would be true if all property were retired because of physical deterioration.

By far the major part of all retirements is, however, due to nonphysical causes, and it is not difficult to show that revenue has a most important bearing. If revenue increases rapidly owing to added volume of the business it may be necessary to provide new facilities and to abandon old units. Revenue is, therefore, a very close guide to inadequacy. Similarly, obsolescence depends upon revenue because without the surplus arising from increased revenues and general prosperity associated therewith improvements would not be made. Furthermore, supersession, including retirements due to public demands, depends upon community prosperity which is paralleled by utility revenues.

If rates are increased to take care of higher cost of service, there is usually a similar increase in construction cost and a higher future cost of retirements for which the increased revenue provides. On the whole, therefore, percentages of revenue tend automatically to adjust retirement reserves to retirement needs.

THE appropriateness of flexibility in recurrent charges for retirements is definitely recognized in the uniform systems of accounts which, in turn, were based on long experience with utility operations and credit requirements. It has also been visualized by independent authorities on the subject as shown by the following quotation from the dissenting opinion

of Mr. Justice Brandeis, already referred to, in the Baltimore Case:

> And even where it is known that there has been some lessening of service life within the year, it is never possible to determine with accuracy what percentage of the unit's service life has, in fact, been so consumed. Nor is it essential to the aim of the charge that this fact should be known. The main purpose of the charge is that irrespective of the rate of depreciation there shall be produced, through annual contributions, by the end of the service life of the depreciable plant, an amount equal to the total net expense of its retirement. To that end it is necessary only that some reasonable plan of distribution be adopted. Since it is impossible to ascertain what percentage of the service life is consumed in any year, it is either assumed that depreciation proceeds at some average rate (thus accepting the approximation to fact customarily obtained through the process of averaging) or the annual charge is fixed without any regard to the rate of depreciation.[21]

FOR the benefit of those who may still believe in useful life and percentages based thereon but recognize the need of some correction, it is pointed out that because property growth, or lack of it, has a bearing upon useful life, the estimated normal years of such life may be approximately corrected by a suitable constant applied to the current rate of property growth or its departure from normal. A form of such correction is shown in the following formula in which N represents the useful life with negligible growth, i is the rate of growth, a decimal, and K is a factor determined by the character of the property and its business:

$$L=N-Ki$$

A value of "K" equal to 50 has been found to fit certain situations. The use of such a partial adjustment, applied to a base figure which cannot be accurately estimated, is not recommended.

[21] 280 U. S. 234, P.U.R.1930A, 225, 236.

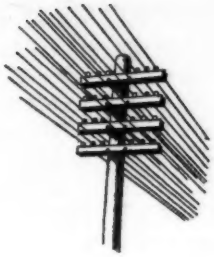
IF the utility customer finds himself in accord with the foregoing discussion, he will accept the following conclusions with respect to depreciation accounting methods:

1. Straight-line depreciation accounting has a plausible, theoretical foundation but lacks reasonable support for its refinements because of useful life uncertainties. It imposes relatively high direct charges against which are alleged advantages of, at best, uncertain magnitude, and often entirely lacking.

2. The sinking-fund method is entirely sound from an economic viewpoint and gives full protection to both customers and utility at moderate cost. Its weakness is that common to the straight-line method—its dependence upon estimates of useful life. Sinking-fund complications are not justified by the inaccuracies inherent in useful life estimates.

3. The retirement reserve method affords simplification in accounting and its administration, reasonable protection to all interested parties, and relatively low cost. Through interest additions to the reserve the accumulation may reach sinking-fund proportions, thereby providing assured protection without reliance upon useful life vagaries.

Consistent with these conclusions the customer may refuse to remain any longer in the category of forgotten men and, with assurance, call upon the regulatory authorities, or those who undertake to represent him before these authorities, to discard straight-line depreciation accounting, and its associated valuation concepts, and to adhere to the older and proven retirement method, with such modifications and restrictions as may be needed to insure sustained fidelity in its application.



Federal Telephone Regulation Gets a Live Wire

Commissioner Paul A. Walker rising from the lowly rôle of principal of a small Oklahoma high school, may, the author prophesies, reach czardom over the nation's telephone lines —His attitude toward the utilities and the public.

By HAROLD KNEELAND

PAUL Atlee Walker could never be saddled with the description applied by a newspaper man to another recent Federal appointee. "He seems to have led a life entirely undebauched by ideas," the reporter commented after his first interview with the gentleman. Ideas are Walker's one debauchery. They have pulled him up the rungs from the lowly rôle of principal of a small Oklahoma high school to what may become czardom over the nation's telephone lines.

It was something of a surprise to some utility interests when Paul Walker, chairman of the Oklahoma State Corporation Commission, was appointed a member of the new Communications Commission last July 11th. Even the two Oklahoma Senators, Elmer Thomas and Thomas P. Gore, although they had given his candidacy their routine endorsements, probably raised their eyebrows at the news.

To be frank, the element of surprise no doubt precluded a barrage that might have made the going very rough for Mr. Walker. He is no bedfellow of the public utilities, and almost everyone would have been preferable as far as they were concerned. They had met him on the battlefield before.

Although his name is ornamented only with the degrees of Ph.B. and LL.B., Walker appears destined to fill a chair in the celebrated brains trust. In the first place, his deeds have been noted approvingly by several members of that unofficial advisory body.

HE was first suggested for the Communications Commission by Dr. Milo R. Maltbie, who wields control as chairman of the state commission over the public utilities of New York state and advises the President on power and other utility problems.

Not alone did Walker have the staunch backing of the Democratic party in his home state. His work in the Southwest had been watched with interest by such powerful administration figures as Joseph Eastman, Dr. W. M. W. Splawn, and David E. Lilienthal. Dr. Splawn could not fill the position himself because of ailing health.

It was not the first time, however, that the utility hare had slumbered while tortoise—Walker—plodded onward to a more commanding eminence. The case had a parallel in 1930 when Oklahoma voted him into the office of state corporation commissioner.

For several years subsequent to 1930, Walker had served as special counsel to the corporation commission. At the time he stepped into the breach, Oklahoma merchants were losing a lot of patronage because of the disparity between freight rates there and in Kansas and other states to the north. Walker went to work and finally succeeded in having the charges adjusted so that none of the states enjoyed an advantage. He figured in other litigation of this type, which endeared him to the hearts of the chambers of commerce and other trade groups.

WHEN Walker announced his candidacy for the corporation commission, he also made it plain that he would accept no campaign contributions from utilities. Nevertheless, he had the moral support of the state's business men and of the utilities themselves, who seemed to have no reason to doubt that he would "go along" with them. Foreseeing that Walker would win, these same interests refused to contribute to the campaigns of his opponents. They said they would remain "impartial."

Walker won at a walk. But when he took office the fireworks started. Immediately Walker was reminded by certain conservative interests that they had supported him in the election. He replied that he had not solicited their backing and that if they had guessed wrong as to the kind of man he was, they had only themselves to blame.

So Walker broke out in a rash of investigations and went wholesale into natural gas, electric light and power, telephone, and cotton ginning rates. It was uphill effort, for he constituted the progressive minority of the 3-man commission. His colleagues—C. C. Childers, the chairman, a Democrat, and E. R. Hughes, a Republican—were less inclined toward "revitalized regulation" than Walker believed they should be. Consequently he was at times on the small end of a two-to-one decision.

IT was only a little better after Childers was replaced by Jack Walton, the impeached former governor of the state, and Walker, as ranking Democrat, became chairman. Walton had campaigned on an antiutility platform, but his election seemed to temper his enthusiasm. Sometimes Walton sided with Walker against Hughes, and sometimes with Hughes against Walker.

But even though Walker was on the losing side in commission decisions, his minority reports were so spectacular that they stole the headlines and gave him the powerful weapon of publicity. When that system

The Benefit of the Doubt

"DURING the fifteen years that Walker was associated . . . with the Oklahoma commission, he maintained the attitude that a man elected to that body by popular vote was not placed there by the people to rule impartially on evidence and testimony presented before him. A public utility is guilty until it is proved innocent, is said to be his version of the legal legend. That does not mean, of course, that he would countenance an injustice—even to a utility."

failed to coax his colleagues into compliance, Walker had as a powerful ally Governor "Alfalfa Bill" Murray, a past master in the art of press relations.

It was Murray who made the newspaper streamers all over the country by calling out the National Guard to enforce Walker's oil proration decisions. The militia seemed to prove effective, too, for now Oklahoma probably has less "hot" oil wells than any other comparable state.

There has been some discussion of Walker's experience, or lack of it, in the field of telephone rate regulation. One thing is definite. He has been in the regulatory business long enough to know the difficulties that beset a state corporation commission when it attempts statewide telephone rate revision.

THE Oklahoma legislature gave Walker only $20,000 for his telephone rate study. And Southwestern Bell is reported to have spent nearly $300,000 on the counter-offensive. He felt something like David being turned loose in Oklahoma to fight a Goliath who stayed in New York. Walker was still boiling when he appeared before the House Committee on Interstate and Foreign Commerce at the hearings which resulted in creation of the Communications Commission.

Even in his new command, Walker will probably feel that his hands are still fettered to some extent as far as telephone rates are concerned. He has only the powers transferred from the Interstate Commerce Commission —the authority to regulate interstate long-distance telephone charges—and the right to conduct an exhaustive investigation of the entire voice transmission set-up.

That inquiry is already quietly un-

der way, even though Walker has not yet obtained the sort of personnel he wants as his assistants. There is no dearth of applicants, of course. No government agency could ever complain that no one wanted a job. But check-ups have shown that virtually all of the experts seeking to affiliate with Walker's division have had some connections with the telephone interests.

It is not Walker's contention that anyone who has ever heard the hum of an enemy generator is incapable of ferreting out the facts, but he does feel that the attitude of men who have remained consistently on the consumers' side of the fence would be more likely to be in the public interest. If possible, Walker will procure most of his help from the few states that are noted for their strong corporation commissions.

During the fifteen years that Walker was associated in one capacity or another with the Oklahoma commission, he maintained the attitude that a man elected to that body by popular vote was not placed there by the people to rule impartially on evidence and testimony presented before him. A public utility is guilty until it is proved innocent, is said to be his version of the legal legend.

That does not mean, of course, that he would countenance an injustice—even to a utility. But he believes the public should have the benefit of the doubt. And to make certain that the people get that benefit, he has been known on many occasions to spend an entire night in study of a pending case and the authorities cited by the opposing counsel, so that he would have ample ammunition for his decision the next morning.

No, Walker is not unbiased. That is the virtue of the courts which handle appeals from state corporation commission decisions.

While Walker already is accumulating data for a sweeping investigation of the telephone monopoly, he may be expected to move slowly for the first few months. The entire commission is in low gear. The members are all recess appointees, subject to confirmation by the Senate, and some think it would not be politic at this juncture to kick up too much dust.

But that inquiry, when it is completed, probably will result in legislation designed to tear down the fences that interfere with efficient state and Federal regulation in the telephone field. By that time Walker may be wearing the mythical mantle of a brains truster. His legal talents and his rate reduction battles in the hinterland fit him for such an advisory capacity.

His membership on the Communications Commission means something far more tangible to Walker than a government title and a superior chance to joust with his old foes. It means a pay raise. His $9,500 a year salary in his new position is twice what he was getting as chairman of the Oklahoma commission. Walker is not a wealthy man, and he has a wife and four children.

Personally, Walker displays the reserve and restraint that characterized his Quaker ancestors, who migrated westward from Virginia during the last century. He is not

colorful but, as one industrialist remarked after listening to a scintillating diatribe by an outstanding administration official: "Colorful? Hell! So is the rainbow. But that stuff about a pot of gold is a lot of bunk."

It was auspicious that on July 10th, the day before Walker was appointed to the Communications Commission, the supreme court of the state of Oklahoma affirmed the state corporation commission's findings in an important gas rate case. Walker wrote that report. A few quotations from the decision may prove illuminating to the reader. Walker wrote:

> The company asked for an allowance for hypothetical and, in most instances, what appeared to be purely fictional, overheads, in the sum of approximately $20,000,000. The chief items among these overheads were designated as "general corporate costs," in the sum of $5,934,031; "general construction costs," in the sum of $5,952,353; "going value," in the sum of $6,260,000. . . . Most of these items were not shown to have been actually incurred in building up the properties and plant of the company. We are not here dealing with the construction of a hypothetical plant. We are concerned with the value of a plant already built and in operation.

In reference to a $1,350,000 item included by the company for "fee to promotion group," Walker stated:

> Where a promoter's fee has actually been incurred in the construction of a public utility plant, we believe a proper allowance should be made for it. But there was nothing in the history of this company to show that a promotion fee had ever been paid to anyone in the building up of this plant. It appears to us that the inclusion by the company of an item for promoter's fees is but another cover for abuse in capitalization, and is but a device to work schemes of extortion upon the investing public.
>
> We believe that honest services of a capable promoter are sometimes necessary in the creation of a comprehensive development project. . . . But payment by the public for such services should be upon the basis of what such services are actually worth.

In discussing the curtailment of natural gas consumption in towns served by an affiliated natural gas company, Walker wrote:

> The fact is undeniable that the present world-wide economic depression has greatly reduced prices in all lines of industry, and on all types of commodities. Public utility rates generally still remain at the same levels obtaining during the boom years of 1927, 1928, and 1929. In Exhibit No. 64 . . . the purchasing power of the dollar was shown to have increased, as a result of low prices during the past three years, approximately 39 per cent. If, therefore, rates charged by the utilities during the boom years . . . were adequate, and they obviously were, else the utilities would have asked this commission for an increase in rates, the same charge for gas service today, with an increase in the purchasing power of the dollar of approximately 39 per cent, is conclusive of the fact that the company, under its present rate schedule, is charging an unreasonable amount for its service.

And, finally, Walker took this slap at utility political activities:

> Another item that should be noted herein is the item charged to operating expense for appearances before legislative bodies for the purpose of opposing legislation which the utility deems material to its interest. Such expenditures are nothing more than "lobbying" expenses, and we have no hesitancy in disallowing them.

In Commissioner Paul A. Walker, telephone regulation certainly gets a live wire.

"I BELIEVE the public utility commission should operate on the principle that not only does it represent the people who buy the services from public utilities but that it represents the owners of the utilities themselves and that it functions to assure both sides of fair treatment."

—H. C. BLACKWELL,
President, The Union Gas & Electric Company.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

EUGENE TALMADGE
Governor of State of Georgia.

"Possibly I have been a little too brash."

HENRY FORD

"I don't see anything wrong with conditions."

REXFORD G. TUGWELL
Under Secretary of Agriculture.

"No one is more opposed to the Russian system than I."

JAMES P. WARBURG
Vice Chairman, Bank of the Manhattan Company.

"Today all too many of our economists are political economists, with the accent on the political."

C. C. DEER
Chairman, Tea, South Dakota.

"Before we sold (our municipal plant) we had to keep up our own lines and that made it expensive."

BENITO MUSSOLINI

"I can affirm there will be no war, at least for several years, because the world powers are making prevention of war their first thought."

FLOYD W. PARSONS
Editor.

"The presumption that anyone who tries to prevent the passage of a law that will take away his property is a public enemy, is utterly absurd."

MERLE THORPE
Editor, Nation's Business.

"If government does not intend to supplant private business, it is of vital importance that it disclose the whole scope of its program and fix clearly its limits."

WENDELL L. WILLKIE
President, The Commonwealth & Southern Corporation.

"Taking into consideration wage levels and taxes, electric energy is sold at lower rates per kilowatt hour in the United States than in any other country in the world."

BERTRAND H. SNELL
U. S. Representative from New York.

"No economic emergency could possibly equal the emergency created by an attempt to foist upon this country a system of government which will exercise the powers of life or death over not only all agricultural, industrial, and business operations but over the liberties and fortunes of American citizens."

A Follow-up on the "Free Electricity" Experiment

Greatest expectations from the plan declared to have been exceeded

THE company reports that customers used 5,633,911 free kilowatt hours, or 40 per cent of the amount paid for at the regular rate while merchants and dealers report sales of electrical merchandise throughout the territory affected of from double to four times the amounts usually sold. A company survey also shows beneficial public relations resulting from the experiment.

BY H. H. COURTRIGHT

THE offer of "free electricity," the use-stimulating plan recently devised by the San Joaquin Light and Power Corporation and put into operation was a daring experiment; and the half-price offer to agricultural power users, evolved to aid the farmer by demonstrating the efficacy of thorough irrigation, was also an interesting experiment. But just how successful were they?

In a previous article [1] it was pointed out that the results of the free electricity plan would not be known until sufficient time had elapsed to show how much of the increased use would be permanent—or, more directly, how many of the domestic lighting customers would qualify for the special inducement rate. But the immediate results are shown directly by the extent to which eligible customers took advantage of the offer and indirectly by the effect of the plan on appliance advertising and sales and on public relations.

On the basis of the immediate results, A. Emory Wishon, president of the company, says: "Our greatest expectations have been exceeded."

What are the immediate results? They divide themselves into four groups:

1. *Public acceptance.* A total of 43,224 domestic and commercial lighting customers, or 52.9 per cent of those eligible, used 5,633,911 free kilowatt hours. This was 40.5 per cent of the kilowatt hours paid for at the regular rate.

2. *Increased sales.* Merchants and dealers report sales of electrical merchandise throughout the territory

[1] PUBLIC UTILITIES FORTNIGHTLY, July 19, 1934, p. 90.

as from double to four times sales last year.

3. *Public relations.* Two surveys covering interviews with 25,000 customers show that the plans unquestionably have had a beneficial effect on the public regard for the company. Public acceptance resulted in much favorable comment.

4. *Cost of campaign.* The cost of the campaign, some $52,540, has been fully justified by the results obtained.

THESE points deserve some elaboration, for, despite the adage that figures never lie, those relating to free electricity need correct interpretation if they are to tell the whole truth.

Before entering into a discussion of the figures in the accompanying tabulation, it might be well to point out that 73 per cent of the customers of the company are in the domestic lighting classification, and that it is to these customers that the inducement rate is directed. Consequently, the response of this group to the free electricity offer is of prime importance. (See Table I shown below.)

It will be seen that 50.2 per cent of the domestic lighting customers used enough "free electricity" to increase the total kilowatt-hour deliveries 32.5 per cent.

As a result of the cumulative force of the campaign, the offer enjoyed wider acceptance in the second month than in the first, both in the number of customers who used free electricity and in the amount of free use per customer. This is true of each classification.

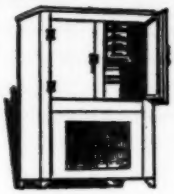
Figures on customer participation include only those who actually used some free kilowatt hours. The number of customers who liberalized their normal May and June use without exceeding their March use, cannot be estimated nor in any way can the company know how many different customers used some free electricity in one month but not in the other.

The domestic cooking and heating report, which is especially interesting, shows that 7.70 per cent of the customers used free electricity averaging 380 kilowatt hours per consumer.

What a cogent sales story these figures tell! The domestic customers actually used their appliances more, increased their lighting, and thus rediscovered the convenience, economy,

TABLE I

	Domestic Lighting	*Domestic Heating & Cooking*	*Commercial Lighting*
Total consumers in class av. of 2 mos.	59,695	9,954	11,076
Consumers using "free electricity" av. of 2 mos.	30,000	7,662	5,315
Per cent consumers using "free elec." av. of 2 mos.	50.2	77.0	48.0
Total kilowatt hours at regular rate	4,772,255	3,913,046	4,095,893
Total kilowatt hours supplied free	1,543,367	2,916,138	1,146,676
Ratio of free kw. hr. to kw. hr. sold (%)	32.5	74.3	28.0
Kw. hr. of free use per consumer 1st mo.	23.5	178.0	101.0
Using "free electricity"—Total	51.4	380.0	216.0



Selling "the Use" of Appliances

"CLEARLY, free electricity was a success from the standpoint of public acceptance. Perhaps one reason is that the time was right. Now conditions are improving and the public again will listen to sales arguments which promise better living. Yet the TYPE *of appeal is important. In this experiment instead of selling appliances, the company sold the use of appliances."*

and necessity of electricity. They proved to themselves what the company has known and preached, but what customers refused to believe—the fact that they haven't started to realize the benefits they may get from their appliances.

Nearly half of the commercial lighting customers were free electricity users. Smaller lamp sizes were replaced with larger in all types of stores; unused fixtures were again turned on; signs were lighted earlier and turned off later at night. Business sections truly became "white ways."

A FEW words should be included here as to the agricultural offer, which was of even more benefit to the farmers than had been anticipated. More than two thirds of the agricultural consumers took advantage of it. They more than doubled agricultural power consumption as compared with the same two months of 1933.

TABLE II

Total agricultural power consumers	15,393
Consumers who had "Special Use"	10,726
Per cent of consumers who had "Special Use"	69.0
Total kilowatt hours at regular rates	20,639,737
Total kilowatt hours at half price	21,212,599
Ratio of "Special Use" kw. hr. to kw. hr. sold at regular rates (%)	102.0
Kw. hr. of "Special Use" per consumer who had "Special Use"—Total	1,980

The business offer, however, was not, of course, entirely responsible for this excellent record. The combination of subnormal rainfall and hot weather in March and April made early and heavy irrigation necessary. The offer, however, did have the effect of persuading farmers to irrigate more liberally, with the result that crops are better this year. By this demonstration the company has been able to justify economically its contention that more thorough irrigation than in the past will result in a real benefit to the farmer which should be good news to him.

CLEARLY, free electricity was a success from the standpoint of public acceptance. Perhaps one reason is that the time was right. Now conditions are improving and the public again will listen to sales arguments which promise better living. Yet the *type* of appeal is important.

In this experiment instead of selling appliances, the company sold the use of appliances. It was as interested in having its customers use appliances more as it was in having them use more appliances. The company merchandised an idea—or is it an ideal?—which the public could comprehend and afford, rather than equipment which many still could not afford. As a power company, it was interested in kilowatt-hour sales more than in appliances; so the managers thought in terms of the labor-saving qualities of electricity instead of the qualities of labor-saving devices.

This is, indeed, not a new merchandising method. It is older than electric service and has been used successfully by most of the company's greatest commodity salesmen. But I am afraid that many utility men are just awakening to the realization that electricity is not only a service but a commodity, which can be sold through the use of the various appeals made for the sale of other commodities.

The company sold appliances, too—or, rather, the dealers did. The value of this coöperation cannot be overestimated. Manufacturers and jobbers worked with the company wholeheartedly.

Together, a ten-weeks' advertising campaign was planned and executed. Special electrical sections were run in newspapers once a week, varying in size from as large as eight pages in Fresno to one page in the smallest towns. Dealers, manufacturers, and jobbers paid for 33,742 inches of appliance sales advertising in these sections, as compared with 26,635 inches announcing and explaining the plan of the power company. The news value of the experiment as shown by the publicity given it by some sixty-odd newspapers was very great.

UNFORTUNATELY, it has not been possible as yet to collect a record of the appliance sales of each dealer in the territory so as definitely to evaluate the worth of free electricity as a sales stimulant. Yet, from letters which dealers have written, from the partial report thus far collected, and from manufacturers and jobber records, it can be concluded that a greater portion of the consumer dollar was spent for electrical appliances during March, April, May, and June of this year than ever before in central California.

Results of the free electricity offer on public relations can best be measured from two surveys, one made at the beginning and the other made toward the end of the offer.

Out of 15,907 calls made in March to explain the plan to customers, 12,576 brought favorable response, 2,718 showed an unwillingness to commit themselves in advance of actual trial, and only 584 were unfavorable or skeptical. Intention to take advantage of free electricity was announced by 8,533, or 53 per cent.

Near the end of the offer, to explain the inducement rate that was im-

mediately to follow, 8,639 interviews were had with consumers on house-to-house calls. Of this number, 7,547 were favorable to the new plan, and 7,359 definitely stated an intention to qualify, that is to say, 85 per cent of those contacted.

Picked employees who made the contacts in both instances were impressed by the new interest shown in power company problems and their possible solutions.

Unsolicited letters of commendation were written to the company by customers; and dealers report that many customers have praised the San Joaquin Company for making the offer and for explaining it so that it could be understood.

The response to the inducement rate, judging from incomplete returns, is surpassing expectations even more than did free electricity.

THE additional cost of the free electricity and half-rate plans was estimated at the time they were adopted, and careful record of the expenditures kept as the program progressed. The costs of additional advertising, display, and commercial work could be planned rather definitely. The increment power costs were more difficult to estimate, with no experience as to what extent customers would utilize their privileges and an uncertainty as to the amount of hydro power available. But the actual costs came well within the budget allowance.

TABLE III

	Budget	*Actual Cost*
Increment energy costs for "Free Electricity" and "Special Use"	$33,450	$27,729
New business expense for additional advertising, display, etc.	15,663	16,432
Commercial expense for notices, postage, extra help, rate charts, etc.	9,635	6,675
Additions to capital for light testing equipment, truck banner holders, etc.	1,258	1,704
Total costs	$60,006	$52,540

No additional costs were incurred for distribution expenses, as even with the large additional use, no trouble was experienced from low voltage or overloaded transformers resulting from present surplus in transmission and distribution capacities. That is why President Wishon, commenting on the experiment, could say: "Our greatest expectations have been exceeded."

"PRIVATE development and operation of electric utilities has been carried on through the coöperation and assistance of a great many individuals, who have manifested faith not only in the continued serviceability of such utilities, but also in the tradition that the government would not embark in private business in competition with its own citizens."

—WENDELL L. WILLKIE,
President, The Commonwealth & Southern Corporation.

What Others Think

A Survey of Public Sentiment on Economic Issues

In view of the fear which has spread throughout the utility industries that the administration may be tending towards a policy of wholesale government competition with private utility enterprise, the result of a statistical survey of public opinion recently taken by the National Industrial Conference Board is of more than passing interest. The survey is based upon replies from 5,050 newspaper editors to a questionnaire, circulated by the conference board, regarding current economic and social problems. Returns were made during August and September, 1934. The accompanying Table I summarizes the results for each question. Although utility regulators and operators will be interested in answers to all of the questions, the replies to questions 13b and 17, respectively, merit special attention.

TABLE I

(Based on Returns from 5,050 Newspapers)

Question Number	Topic	Replies, Number				Replies Per Cent of Total			No Reply	
		Total	Favorable	Opposed	Doubtful	Favorable	Opposed	Doubtful	Number of Returns	Per Cent of All Returns
	Social Insurance									
1	Compulsory unemployment insurance	4,682	1,849	2,724	109	39.5	58.2	2.3	368	7.3
3	Compulsory old age pensions	4,599	2,970	1,517	112	64.6	33.0	2.4	451	8.9
	Cost and Organization of Government									
5	Increasing the national debt	4,805	353	4,279	173	7.3	89.1	3.6	245	4.9
6	Reducing number of government employees	4,838	4,224	515	99	87.3	10.6	2.0	212	4.2
7	Civil Service Law for new agencies	4,584	3,572	926	86	77.9	20.2	1.9	466	9.2
	Government and Business									
8a	Fixing prices, farm products	4,903	1,154	3,609	140	23.5	73.6	2.9	147	2.9
8b	Fixing prices, factory products	4,681	796	3,784	101	17.0	80.8	2.2	369	7.3
9	Restricting crops	4,921	867	3,919	135	17.6	79.6	2.7	129	2.6
10	Restricting amount of manufactured goods	4,780	524	4,153	103	11.0	86.9	2.2	270	5.3
11	Legal standards for private business management	4,743	1,022	3,609	112	21.5	76.1	2.4	307	6.1
12	Control of private business by officials	4,874	256	4,563	55	5.3	93.6	1.1	176	3.5
13a	Federal competition, transportation	4,872	542	4,260	70	11.1	87.4	1.4	178	3.5
13b	Federal competition, power companies	4,857	1,240	3,485	132	25.5	71.8	2.7	193	3.8
13c	Federal competition, other industry	4,754	170	4,513	71	3.6	94.9	1.5	296	5.9
14	Nationalizing the banks	4,756	1,691	2,839	226	35.6	59.7	4.8	294	5.8
15	Administrative power over purchasing value of the dollar	4,648	1,193	3,283	172	25.7	70.6	3.7	402	8.0
16	Redistributing wealth by taxation	4,751	1,012	3,525	214	21.3	74.2	4.5	299	5.9
17	Profits as an essential to business progress	4,859	4,581	234	44	94.3	4.8	0.9	191	3.8
18	Government regulation of profits, other than public utilities	4,780	1,205	3,417	158	25.2	71.5	3.3	270	5.3
	Government and Labor									
19	Compulsory labor union membership	4,888	231	4,601	56	4.7	94.1	1.1	162	3.2
20b	Government fixing, minimum wages	4,616	2,519	2,021	76	54.6	43.8	1.6	434	8.6
20d	Government fixing, maximum hours	4,462	2,262	2,134	66	50.7	47.8	1.5	588	11.6
22	Making sympathetic strikes and lockouts illegal	4,685	3,549	1,011	125	75.8	21.6	2.7	365	7.2

THE results compiled by the conference board were also classified on the basis of the circulation of newspapers reporting; that is to say, instead of a reply from an editor whose newspaper had only 5,000 circulation being given equal weight with one from an editor whose paper had 50,000 readers, the circulation was used as a factor to weigh the results. In consequence, there is a somewhat surprising gain in the so-called "liberal" side to these questions and a corresponding loss for the so-called "conservative" side, as indicated in the accompanying Table II:

TABLE II

(BASED ON RETURNS FROM 5,050 NEWSPAPERS WITH 24,843,677 CIRCULATION)

Question Number	Topic	Circulation In Thousands				Circulation Per Cent of Total			No Reply	
		Total	Favorable	Opposed	Doubtful	Favorable	Opposed	Doubtful	Circulation, in Thousands	Per Cent of Total Circulation
	SOCIAL INSURANCE									
1	Compulsory unemployment insurance	23,431	12,455	10,161	815	53.2	43.4	3.5	1,413	5.7
3	Compulsory old age pensions	23,407	16,322	5,342	1,743	69.7	22.8	7.4	1,437	5.8
	COST AND ORGANIZATION OF GOVERNMENT									
5	Increasing the national debt	23,624	2,410	20,114	1,100	10.2	85.1	4.7	1,220	4.9
6	Reducing number of government employees	24,332	21,266	2,071	996	87.4	8.5	4.1	512	2.1
7	Civil Service Law for new agencies	23,333	19,978	2,512	842	85.6	10.8	3.6	1,511	6.1
	GOVERNMENT AND BUSINESS									
8a	Fixing prices, farm products	24,309	3,565	19,235	1,509	14.7	79.1	6.2	534	2.2
8b	Fixing prices, factory products	23,765	2,275	20,152	1,338	9.6	84.8	5.6	1,078	4.3
9	Restricting crops	23,951	4,332	18,441	1,178	18.1	77.0	4.9	893	3.6
10	Restricting amount of manufactured goods	23,940	1,364	21,857	719	5.7	91.3	3.0	904	3.6
11	Legal standards for private business management	23,076	8,674	13,496	906	37.6	58.5	3.9	1,768	7.1
12	Control of private business by officials	24,349	1,317	22,466	567	5.4	92.3	2.3	494	2.0
13a	Federal competition, transportation	24,188	3,012	19,264	1,912	12.5	79.6	7.9	656	2.6
13b	Federal competition, power companies	24,228	7,273	14,658	2,298	30.0	60.5	9.5	616	2.5
13c	Federal competition, other industry	22,695	647	21,318	730	2.9	93.9	3.2	2,149	8.7
14	Nationalizing the banks	22,744	8,842	12,153	1,749	38.9	53.4	7.7	2,100	8.5
15	Administrative power over purchasing value of dollar	22,210	5,024	16,228	958	22.6	73.1	4.3	2,634	10.6
16	Redistributing wealth by taxation	24,185	6,087	15,379	2,719	25.2	63.6	11.2	658	2.6
17	Profits as an essential to business progress	24,334	23,333	670	331	95.9	2.8	1.4	510	2.1
18	Government regulation of profits, other than public utilities	22,872	5,737	15,198	1,937	25.1	66.4	8.5	1,972	7.9
	GOVERNMENT AND LABOR									
19	Compulsory labor union membership	24,452	1,498	22,378	576	6.1	91.5	2.4	392	1.6
20b	Government fixing, minimum wages	23,348	15,330	6,580	1,438	65.7	28.2	6.2	1,495	6.0
20d	Government fixing, maximum hours	22,706	15,114	6,259	1,332	66.6	27.6	5.9	2,138	8.6
22	Making sympathetic strikes and lockouts illegal	23,205	15,964	6,299	942	68.8	27.1	4.1	1,638	6.6

ON the assumption that larger circulation reflects more urban than rural opinion, the increase in liberal sentiment in Table II would appear to indicate that the strength of the progressives is in the larger cities, rather than in the smaller towns and villages. Heretofore, many political analysts have held that it is the rural communities which are most likely to nourish the liberal theories.

—F. X. W.

A STATISTICAL SURVEY OF PUBLIC OPINION. National Industrial Conference Board Studies. Number 205. New York, N. Y. October, 1934.

What Has TVA Power Accomplished So Far?

"IN spite of hell and high water the TVA is going great guns. We find ourselves with ample funds and with a splendid personnel. We are in a position to take advantage of the public works program under the new policies."

So said Power Director Lilienthal of the Tennessee Valley Authority to newspaper reporters shortly before testifying before the Tennessee commission to the effect that the members of the Authority cannot under the Constitution voluntarily subject themselves to state regulation. The testimony was received in connection with proceedings initiated to approve the agreement whereby TVA would take over power distribution and transmission facilities of the Tennessee Public Service Company for ultimate resale of such properties to the city of Knoxville—a transaction that marks the completion of a deal by which Knoxville is expected to receive cheap electricity. Little Tupelo, Miss., was the first town to have TVA current. The Knoxville district (population about 125,000) will be the first large area supplied. Already 11 contracts with municipalities for TVA current have been executed, while applications for contracts are said to number more than 300.

RAYMOND Gram Swing, correspondent for the *Nation*, gives us a sympathetic estimate of the good deeds accomplished by the TVA as of early October, 1934. We learn from Mr. Swing that the TVA rate for 240 kilowatt hours a month in Knoxville is 34.1 per cent less than the rates previously charged by the private company and 16.4 per cent less than the "promotional rates" offered by the company when threatened with municipal competition. Mr. Swing feels that this has been accomplished notwithstanding the exemplary "fair treatment" given the security holders of the private company by the TVA in the purchase negotiations. Here is Mr. Swing's description of the deal:

> The bondholders of the National Power and Light Company, owners of the Tennessee Public Service Company, get back the issue price of the bonds, 96½. The preferred stockholders retain $3,300,000 in cash and liquid assets, as well as a street railway in Knoxville with a book value of $4,042,000, now to be helped to operate profitably. The common stock representing no investment whatever is not recognized in the transaction.
>
> One night in 1930, after the depression was well under way, the company wrote up its books by over $4,500,000 and issued common stock on this write-up. In four years of the depression the Knoxville district paid $846,000 in dividends on such common stock representing no investment. At the same time it paid an 8 per cent return on the street railway company, which was running at a loss.
>
> In the Knoxville deal the TVA is now paying dollar for dollar of the real value of the property it takes over, and so lays down the principle which one assumes will be followed in the nation-wide electrification schemes of the New Deal. The Knoxville facilities of the company might have been replaced at less cost than the purchase price. But the TVA went the whole way to meet the claim of the owners of private property to honest treatment. . . . Knoxville was scheduled to receive a PWA loan to build its own distributional system in competition with the Tennessee Public Service Company. Had it been built, the private company would have faced ruin. No doubt this threat made successful negotiations possible, but it was not used to condemn the property at a sacrifice.

Mr. Swing condemns criticism of the TVA purchase on grounds of alleged confiscation of existing property by threats to establish unnecessary competitive facilities. He says that the Knoxville deal is neither potential nor actual destruction of capital, but rather the destruction of "watered stock" which is quite another matter.

MR. Swing finds that TVA construction activity has effectively exploded that "common superstition"—the belief that bureaucracies are slow to move, awkward in action, and uninspired by inventiveness. Not only are the Joe Wheeler and Norris dams both well ahead of construction schedule (now expected to be finished in 1936)

but the model town of Norris is three fourths built and a subsidiary merchandising agency (EHFA) is swelling appliance distribution throughout the valley—spreading comfort and convenience as well as improving the power load factor—all within the first anniversary of TVA's creation. Says Mr. Swing:

> The bureaucracy known as the TVA is manned by a staff with a spirit not to be found in any private enterprise I ever heard of. Relations between employer and employee produce a team spirit which would be the envy of any corporation. More than that, employment includes the opportunity for education and training, so that men now working, for instance, on the Norris dam are being fitted for permanent usefulness and economic value when the dam is finished.
>
> Those who visit Tennessee and those who visit the great construction centers in Russia remark the same thing—the astonishing enthusiasm of the people on the job. What creates this enthusiasm in both communities is the same. It is the sense of doing something constructive and creative, for the common good. This is not the profit motive, supposed to be the only one which can keep the world going. It is the service motive, and in the Tennessee valley it is already producing results better in every way than those to be had from the profit motive.

Summing these accomplishments of the administration's brilliant yearling, Mr. Swing quotes the Scripps-Howard newspaper estimate that "the whole region affected directly or indirectly by the TVA can rejoice over a voluntary reduction in recent months of power rates by private utility companies amounting to $16,000,000 a year." This region so described embraces the eleven states from which the TVA has received applications for contracts. Mr. Swing adds, "This reduction in five years will equal the sum already allocated to the TVA."

THERE are some skeptical souls who are not impressed by the alleged attainments of the TVA. Some of these ate dinner together in New York city on the evening of September 26, 1934, under the auspices of the American Statistical Association. There were speeches—good speeches. One address, in particular, that by Wendell I. Willkie, president of the Commonwealth & Southern Corporation, was exceedingly interesting in that it threw a number of new lights on what is fast becoming a very hackneyed even though very important subject.

Mr. Willkie is by no means a personality that calls to mind the stereotyped stout gentleman who appears in cartoons habitually wearing a high silk hat, spats, striped pants, cane, and fat cigar, in the most absurd places under such labels as "Old Order," "Tory," "Bourbon," or simply "Big Business." Mr. Willkie, on the other hand, is one of the younger modern business executives who finds much to commend in the efforts of the present administration towards the more abundant life and in any event can see and appreciate the motives of those with whom he does not agree. Concerning the TVA membership, Mr. Willkie concedes that the two Drs. Morgan and Lilienthal are "men of intelligence, energy, and devotion to the work which they have undertaken." Just the same, he thinks they are in error in that the so-called accomplishments of the TVA are greatly overrated when one fairly considers necessary extenuating factors.

TAKE the question of fancy bookkeeping. When the owner of property wants to swell the appraisal of its value for operating purposes, there is the tendency to "write up"—so condemned by Mr. Swing. By the same token, when one who is about to own or take over a property, wants to minimize its value for purchasing or bookkeeping purposes, there is a tendency to "write down." If there is no justification for the one, neither is there justification for the other. And yet Mr. Willkie declares Dr. Arthur Morgan (who complained so of "write ups" in the Tennessee Public Service Company property) himself proposes to "write down" the value of Muscle Shoals power properties from $60,000,000 invested by the American people from 1918 to 1925 to $20,000,000, present fair value, on ground that the

properties have depreciated 66⅔ per cent. Mr. Willkie does not condemn this "write down." He even says it is clever business practice, but in view of the fact that private utilities are forbidden by Supreme Court decision to take any such depreciation, he feels that in making a fair comparison with private operation, this factor should be taken into account.

There are other factors, also, which must be taken into account, according to Mr. Willkie. For example, 30 per cent of the cost of the new municipal plant will be a gift from the Federal government. We must assume, therefore, for comparative purposes a 30 per cent deduction from the Tennessee Electric Power Company's investment. After applying Dr Morgan's "write down" tactics to the company's properties, its original $100,000,000 investment in generating, distribution, and transmission facilities in East Tennessee shrinks by a subsidy of $46,500,000 —an amount with which the company would pay off preferred stock, a portion of bonds, and write down its capital structure accordingly. Then there is a difference in annual taxes paid by TVA as compared with the company—another $1,800,000 deduction. Finally, for comparative purposes, the Tennessee Electric Power Company must be divorced from its unprofitable street railway system which both state and Federal courts say it must continue to support with its electric business because the latter in turn was supported in its unprofitable youth by the once flourishing railway system.

IF all the factors are considered, says Mr. Willkie, the private company could, on its present volume of business, double its net income, and cut its industrial rates (without the uncertain surcharge) to 10 per cent below the rate charged by the TVA and reduce rates for domestic and commercial consumers to 35 per cent below the rates charged by the TVA in that nationally famous yardstick at Tupelo. Even on such a state of facts, the TVA would be enjoying numerous subsidies not allowed to the private company. Mr. Willkie stated:

> Over and above these things which I have mentioned, this governmental agency still has enormous advantages, all paid for by the taxpayers, over private utilities. Do you realize that all who work for it travel on the railroads at a reduced rate? Do you realize that all freight hauled by the railroads for this governmental project is hauled at not to exceed 66⅔ per cent of the freight rate paid by you or by a private power company, while at the same time the government is using the taxpayers money to support the railroads in their financial difficulty? Do you realize that every letter or circular or advertising dodger, bill for service, etc., which this governmental agency sends out is franked, while the Postal Department operates at a deficit which is supplied by the taxpayers? In addition, the TVA is financed at low interest rates on the credit of all of the property and earnings of every man, woman, and child in this country, for such is the lien of Federal borrowings.

MR. Willkie also gave some interesting sidelights on Tupelo, that small Mississippi town of 5,000 inhabitants which has been so widely advertised as the town in which TVA rates have been put into effect with a resulting rapid and large increase in the use of electric energy. He said:

> A fact in connection with the Tupelo situation which apparently has not been equally emphasized in press releases is that Tupelo always has been a municipal plant operation. The only change that has occurred recently is that the TVA is supervising without charge the municipality's operation and with Federal funds and tax exemption is selling power wholesale to the municipal plant at a rate of 5.5 mills or about ½ cent per kilowatt hour lower than formerly charged by a private utility which was furnishing the wholesale energy to the city and its industrial consumers. Consequently, Tupelo, assuming it is now making money, leaving out the supervision expense donated by TVA, could have prior to the TVA entrance into the situation had a domestic rate with a top step of 4 cents and a low step of 1 cent per kilowatt hour —which all utility men know is low enough to build any domestic use than can be built with the TVA domestic rate which is only slightly lower.
>
> However, until five months ago, the rate charged by Tupelo of its domestic consumers was from one and a half to twice as

The Daily Oklahoman

THE FOSTER MOTHER

high as the rates charged by privately operated public utility companies in the same area. Likewise, the municipality had done nothing to build up the business or promote efficiency of operation, with the result that at the time the TVA took over the contract for the sale of wholesale power to the city, the average domestic consumption was less than 400 kilowatt hours per year per domestic consumer. The average use of domestic consumers in cities in the same area which were furnished electric energy directly by private companies was 800 kilowatt hours per year. Thus the TVA has rendered a real service in the Tupelo situation in again showing what utility men have always contended, namely, that municipal operation does not function effectively or efficiently.

THAT is certainly a novel slant on the Tupelo situation—namely that it took the TVA to show up the deficiency of previous inefficient management of the municipal plant. Mr. Will-

kie points out four specific instances where the private company operating in Georgia had taken over municipal plants similar to that taken under control by the TVA at Tupelo and had increased usage much more rapidly than the 88 per cent increase claimed within twelve months at Tupelo. In conclusion Mr. Willkie believes that the merchandising activities of the TVA (and the EHFA) will prove beneficial to all private electric companies by promoting a much wider distribution of appliances, but he points out that both TVA and EHFA have enjoyed thousands of dollars worth of free publicity, franking privileges for circularization, and the backing of the government in overriding the opposition of the independent appliance dealer opposition so intense that it resulted in some states in making it unlawful for private utilities to sell merchandise at all. —F. X. W.

So This Is Bureaucracy! By Raymond Gram Swing. *The Nation*. October 10, 1934.

Government and Private Ownership. By Wendell L. Willkie, President, The Commonwealth & Southern Corporation. *The Annalist*. October 5, 1934.

Plans for Salvaging Commission Regulation

There are entirely too many people in this country who assume that state commission regulation has failed because they have heard the "breakdown of commission regulation" story so often. Based on this assumption, these good citizens invariably suggest public ownership as the logical and handy alternative. It sounds simple and reasonable, just like a man saying to himself, "What, no street car service? All right, I'll take a cab." But suppose there isn't any cab. Suppose, to revert to the alleged failure of regulation, the government ownership alternative isn't as simple and convenient as it sounds when suggested so blithely by those who condemn commission regulation as an obsolete and unworkable hangover in government experimentation. In that case it might be well to question whether we won't just *have* to make a go of commission regulation at least until we are in a position to switch over to public ownership.

It was William A. Roberts, people's counsel for the District of Columbia, who raised this question in an address to the American Society of Municipal Engineers—an address distinguished by an uncommon amount of common sense. Whether or not one agrees with Mr. Roberts' suggestions about bolstering up commission regulation, his discussion compels the admission that he has a keen sense of appreciation for the practical approach in dealing with regulatory problems. Level-headedness is an all too rare quality in these days of regulatory experimentation.

Mr. Roberts dismisses as impracticable the theory that we can substitute over night, so to speak, public ownership for commission regulation—just like that. He reminds us that 92 per cent of power and an even greater proportion of telephone service used in this country are furnished by private enterprise. He adds, "It is not likely that funds from public sources can be found with which to absorb this stupendous investment in capital estimated to exceed 50 billion without a revolutionary change in our form of government."

So that's that. Now what about this charge that commission regulation has broken down—failed. Mr. Roberts does not believe it. He does not believe that it has ever been given a fair chance. He believes that statutory restrictions and inadequate appropriations resulting in many instances in attracting

incompetent personnel, have so handicapped the commissions that they have functioned only with great difficulty. Even so, he finds much to commend in the record of the accomplishments made so far by the state boards.

The trouble, he finds, is just as much with the standard used to judge the success or failure of commissions as it is with the commissions themselves. For various reasons, the American public has been educated, generally speaking, to a state of mind where the amount of utility rate reductions accomplished is the sole criterion of the success of a state commission. This is, of course, unfair and unsound. The people overlook the fact that certain evils which troubled railroad operations have never been permitted to enter other utility operations, solely because the state commissions have been there to prevent their entrance. But evil avoided is a rather intangible benefit for the general public to understand.

Take rate discrimination, for example. Mr. Roberts reminds us that the Interstate Commerce Act was passed, not so much because railroad rates were generally oppressively high, but because of the abuses resulting from rebates and other forms of discrimination. State commission regulation has eliminated this abuse in the railroad field and prevented it from even entering the other utility fields to any appreciable extent. Nobody can truthfully say that they have fallen down on that most important job. An end of carrier regulation would undoubtedly mean a return of the old unsatisfactory discriminatory conditions which exist even today, to some extent, in the unregulated fields of motor carriers and some pipe-line carriers.

On the charge of "failing to regulate the holding company," Mr. Roberts replies that the commissions have not been statutorily permitted to do so and points out that the soundness of operating utility corporate securities is a compliment to the effectiveness of state commission regulation where it is given sufficient regulatory jurisdiction.

However, the speaker did have two interesting specific recommendations to make towards bolstering up commission regulation. The first had to do with the present dual capacity of the average commission which must first dig up data in rate cases and then—but, let Mr. Roberts tell the story in his way:

> It then, to use a simile, turns its face to the back drop on the regulatory stage, dons a beard, and confronting the supposedly strange members of the staff, is supposed to be an unbiased judicial body. In my opinion, any man who can assume a completely impartial attitude after having reached a preliminary conclusion through his own inquiry is too facile in mind-changing to be a good administrator. The fact is that most good commissioners fear the charge of partiality toward the public, and lean back so far that they fail to give the public the even break it deserves. The attempted combination of administrative and judicial functions is at best an attempt to evade supposed constitutional requirements, and is at worst a deliberate evasion of judicial review by false allegations of impartiality which fools the judiciary only when it chooses to be fooled.
>
> It is this game of "make-believe we're judges" which prolongs hearings and drives government counsel to early graves or more simple and lucrative rôles as company lawyers.
>
> I suggest that it be recognized that 95 per cent of the work of commissions is and must always remain administrative, that at least 90 per cent of all regulatory orders are obeyed without court review, and that a man cannot be an aggressive administrator of regulatory and punitive laws without departing from the rôle of judge.
>
> Let us reconstruct our regulatory system on the same organization plan as any institution of scientific research. There should be a director of public utilities with an adequate permanent engineering, accounting, and clerical staff. He should be supplied with competent counsel so that he may avoid litigation and may properly construe the laws which he must enforce.
>
> Then create a genuine specialized court before which the director must defend his actions when challenged by either the people or the utilities. Establish by law a presumption of validity of all findings of fact of this court, permitting review only on constitutional questions, and then only to assure a fair opportunity for presentation. Supply this special court with a small staff of examiners and clerks, much as the United States Board of Tax Appeals has

its aides, and then you will have logical machinery which, if supplied with able and honest men, will make regulation succeed.

MR. Roberts' second suggestion has to do with the financing of regulatory costs through taxation. On this subject he says:

> There is no justification for payment from the general tax revenues of large sums used to aid local groups or special classes of consumers. The cost of such benefits should be paid by those who are benefited.
>
> I therefore suggest that only the costs attributable to the services of state or Federal commissions in *general* public matters be paid from appropriations and that all other costs of regulations be levied *pro rata* on the utilities, based on gross receipts as to statewide matters, and directly upon the utility concerned as to specific cases. I believe the costs incurred by cities or other local governmental units in rate proceedings should also be assessed against the utility concerned.
>
> As safeguards against extravagance, there is the right of legislative review and adjustment of legislative limitations on the amount which could be spent each year.
>
> I further believe that the corporation court which I have described herein should have the power to limit such charges after hearing and to distribute the accounting so that unreasonable expenses by the public authority or the utility would be prohibited. I believe that the costs of investigations of criminal or illegal practices by utilities where the suspicion is confirmed should be charged to the corporate funds of the utility and its stockholders and not transferred through operating expenses to the consumer. The statutes of Wisconsin, Washington, and even the District of Columbia are instructive on this point.

THIS is a subject that needs much consideration, particularly in these days when there is a tendency to defray the cost of all regulatory work of the state by blanket taxation of all utilities operating in the state. Of course, regulation is theoretically of advantage to all utilities and to that extent all utilities might fairly be asked to contribute. But is it fair that stockholders and customers of a company where rates are not in question should be taxed for the cost of litigating another company's rates?

—F. X. W.

PUBLIC UTILITIES REGULATION HAS NOT FAILED (IT HAS NOT BEEN TRIED). Address by William A. Roberts before the Rochester Convention of American Society of Municipal Engineers. September 24, 1934.

Other Articles Worth Reading

AN APPRAISAL OF PROGRESS MADE TO DATE BY THE TVA. By S. T. Henry. *Engineering News-Record.* September 20, 1934.

ARE WE ON THE RIGHT ROAD? By John A. Ryan. *The Commonweal.* October 12, 1934.

AUDITING THE NEW DEAL. *Business Week.* September 29, 1934.

CAN THE RAILROADS COME BACK? By Samuel O. Dunn. *Today.* September 22, 1934.

"FREE ELECTRICITY" IN MILWAUKEE. *Electrical World.* September 29, 1934.

GOVERNMENT AND PRIVATE OWNERSHIP. By Wendell L. Willkie. *The Annalist.* October 5, 1934.

HOW MUCH DOES WATER TRANSPORTATION COST? By J. J. Pelley. *Industrial News Review.* September, 1934.

NATURAL GAS MOVES FORWARD. *The Financial World.* October 10, 1934.

NOW OR NEVER. By George Clarke Cox. *The Annalist.* October 5, 1934.

OUR PROBLEMS AND OUR FUTURE. By Alex Dow. *Electrical World.* September 15, 1934.

OUR "PROSPEROUS" UTILITIES. *The Financial World.* October 10, 1934.

PUBLIC UTILITY POLICY IN THE NEW DEAL: SERVICES CONSIDERED AS DIVIDENDS. By David Friday. *The Annalist.* October 5, 1934.

PUBLICITY AND THE TELEPHONE COMPANY. *The Canadian Telephone Journal. September, 1934*

RETURN ON INVESTED CAPITAL AS A YARDSTICK FOR THE PUBLIC UTILITY INVESTOR. By Chester C. Dodge. *The Annalist.* September 28, 1934.

SEASONAL TRENDS IN UTILITY INCOME. *The Financial World.* September 19, 1934.

The March of Events

State Commissioners to Meet at Washington, D. C.

THE forty-sixth annual convention of the National Association of Railroad and Utilities Commissioners will be held at the Willard Hotel, Washington, D. C., November 12th to 15th, marking the first time since 1925 that the convention has been scheduled for the Nation's capital. The Interstate Commerce Commission, the District of Columbia Public Utilities Commission, and the city of Washington have joined together to welcome the members of the national association.

The ICC, according to the official call issued by Secretary James B. Walker, has set down for hearing on November 16th (the day following the adjournment of the convention) the Passenger Fare Case, thus permitting commission representatives attending the hearing to attend the convention also without additional travel cost.

The following prominent officials are scheduled to address the convention: Hon. Joseph B. Eastman, Federal Coördinator of Transportation; Hon. Melvin C. Hazen, president of the Board of Commissioners of the District of Columbia; Hon. William E. Lee, chairman of the Interstate Commerce Commission; Hon. Riley E. Elgen, chairman of the District of Columbia Public Utilities Commission; Hon. Frank R. McNinch, chairman of the Federal Power Commission; Hon. E. O. Sykes, chairman of the Federal Communications Commission. The program for the convention will be wholly devoted to the most important problems of regulation, including discussions of the following subjects: The Johnson legislation, limiting the jurisdiction of the lower Federal courts in cases involving the validity of state commission orders; regulation of transportation by motor carriers upon the highways, in regard to both Federal and state regulation; valuation, and the effect of recent judicial decisions on determination of the rate base; regulation of communications by state and Federal authorities under state laws and the Federal Communications Act.

As usual, the convention's entertainment program has been arranged to guarantee delegates and guests an enjoyable time between business sessions.

Opens New Waterway Drive

SECRETARY of War Dern recently opened the administration's new campaign to have the St. Lawrence seaway and power project ratified by Congress, according to the Washington (D. C.) *Evening Star*.

Secretary Dern, in a speech before the Upper Mississippi and St. Croix River Improvement Commissions, set the total cost of the seaway at $543,429,000 and said:

"If the present generation is to reap the benefits from this great undertaking it should be speedily started. Its prosecution should go hand in hand with the development of the interior waterway system of the Mississippi river, with which it is so closely associated."

"The opposition to ratifying the treaty," he said, "is due to a variety of reasons. . . . It should not be permitted to obscure the tremendous benefits that will result from cheap transportation, cheap electricity, and relief of unemployment."

A treaty, under which the United States and Canada would extend ocean-going navigation to the Great Lakes and develop hydro-electric power, was defeated at the last session of the Senate.

Minor modifications of the waterway pact will be sought soon in diplomatic conversations with Canada, the *Associated Press* reported.

It was emphasized, however, that the general principles of the treaty would be retained when President Roosevelt resubmits it to the Senate for approval.

Eastman Urges Regulation of All Transportation

MAKING two addresses in Chicago in one day and speaking in Kansas City the next, Federal Coördinator Joseph B. Eastman again stressed the need for public regulation of all forms of transportation.

"Public regulation," he said, "is needed for the welfare of industry itself, to promote order and stability, prevent exploitation, and curb destructive competition and waste."

This supervision, he declared, should be coördinated under a single head.

"Public regulation of all forms of transportation cannot be imposed for the benefit of railroads alone," he added, and "you may dismiss from your minds any thought that public regulation will remove highway or water or air competitors from the railroad path. Those forms of transportation meet public needs which otherwise would not be met and are here to stay."

The Coördinator suggested opportunity should be afforded for consolidation and unification of properites and for the pooling of revenues, traffic, and equipment. He also suggested that provision be made for financial reorganization of companies in unsound condition.

Eastman said he and his colleagues were preparing a plan for revision of the bankruptcy act to expedite early reorganization of carriers now in receivership or bankruptcy.

Coördinator Eastman reiterated his unwillingness to recommend government ownership of the railroads under existing conditions, but he reserved the right to change his mind "if good reason develops."

FCC Seeks PUC Coöperation

PUBLIC utilities commissioners recently were asked by Paul A. Walker, chairman of the telephone division of the Federal Communications Commission, to suggest ways and means of bringing about "the greatest mutual helpfulness of the FCC and the state commissions, in securing maximum public service."

Specifically, the new Federal regulatory agency wants to know to what extent the commissions may be ready to coöperate in a telephone investigation, what matters in reference to telephone company regulation demand immediate attention, and whether the state commissions have any suggestions regarding amendments to the existing Federal Communications Act.

FPC Reports Surveys

FRANK R. McNinch, chairman of the Federal Power Commission, recently reported to President Roosevelt on the progress of three studies now being carried on by the commission, according to *The Wall Street Journal*. These are the national power survey looking toward development of a national power policy, electric rates, and holding companies.

The rates survey will be ready for Congress in the early part of the new year when Mr. McNinch expects to submit that report. He said this will not contain recommendations but explained it could be used as the basis for new legislation. The national power survey has progressed to a point which indicates that a report may be made also at the next session but not until after the rate report is submitted. This is a study of power resources of all sorts and development of a national plan for distribution and will carry recommendations having to do with coördination of a national power policy, as well as distribution of power.

Mr. McNinch stated that the commission's study of the holding companies and interstate transmission of power will probably be ready for President Roosevelt early in January.

Urges Aviation Regulation

AMERICAN Air Lines, Inc., recently joined North American Aviation, Inc., in advocating a permanent Federal aviation commission before the agency that will advise President Roosevelt on a long-time aviation policy.

Lester D. Seymour, president of the American Air Lines, urged upon the President's aviation commission the creation of such an agency to take charge of "the complete regulation and administration of Federal control and assistance to commercial air transport."

Seymour also favored legislation permitting the Federal government to own and operate airports on regular routes, with the assistance of local governments.

Alabama

TVA Question for Courts

HUGH White, president of the public service commission, in a letter to the Tennessee Valley Authority, stated that the question of the commission's jurisdiction over TVA operations in Alabama ultimately would have to be settled by the courts, according to the *United Press*.

The authority has vigorously contended that, being a government agency created by an act of Congress, it is not subject to action of a state commission.

Representatives of the TVA are ready to appear before the commission and give any relevant data concerning its operations provided their appearance is not construed as conceding the regulatory body's jurisdiction over TVA rates and policies, the three authority members informed the commission.

ICC Hearing on Rate Boost

MEMBERS of the Interstate Commerce Commission were scheduled to meet in Birmingham November 7th to take testimony in the freight rate advance petition of the

railroads, according to the *Birmingham News.*

The ICC began its hearing in Washington October 1st when the railroads presented witnesses and other evidence on which they base their hopes for approval of the higher rate schedule.

Moves for Gas Rate Slash

By unanimous vote the Birmingham city commission recently instructed the city legal department to file an application with the public service commission for a 25 per cent reduction in gas rates charged in Birmingham, according to an item in the *Birmingham News.*

The resolution reiterated instructions to the legal department to resist a petition of the Birmingham Gas Company for an increase in rates. The company has applied to the public service commission for an increase estimated at 26 per cent and a hearing was set for November 7th.

Arizona

Verde Dam Loan Rescinded

An allotment of $4,000,000 to begin construction of a dam on the Verde river, north of Phoenix, has been rescinded by the Public Works Administration because an investigation disclosed the power and irrigation development would be unable to repay cost of the project.

Secretary Ickes said the engineering board found the cost of the project had been underestimated by $10,000,000. The proposed development included construction of three power plants.

Concerning the power develpoment, the engineering board said, "under the present depressed condition of the mining district in Arizona it appears unlikely that any appreciable amount of additional power can be marketed commercially."

Arkansas

Tribunal Opens Hearing

The utilities fact finding tribunal of the corporation commission opened its hearing October 10th on the results of its first investigation into the rate structure of any Arkansas utilities concern since the tribunal's creation by an act of the 1933 legislature. It reported on its inquiry, started May 15, 1933, of the Arkansas Utilities Company, serving communities from Helena to Paragould, according to *The Arkansas Gazette.*

California

Votes to Purchase Utility

Authority to borrow money to acquire the electrical facilities of the Los Angeles Gas and Electric Corporation was given the water and power commission in the adoption of Charter Amendment No. 16-A in a recent special election at Los Angeles.

The adoption of 16-A means that the power bureau may absorb the corporation's electric plants if Federal laws are amended in accordance, if the money is loaned to the bureau and if the people approve the financial arrangements, when worked out.

Considerable confusion developed as to the future operations of the utility company as a result of the defeat of the gas franchise proposition, Charter Amendment No. 4-A.

Defeat of the amendment came as a surprise in many quarters as the proposition had received general approval, presumptively including that of power bureau officials who had forced the issue.

The corporation has the alternative of resubmitting the measure at next April's city election and of continuing the litigation, which would have ceased had the amendment been adopted. Meanwhile, the corporation's future is beclouded and the city loses franchise revenue.

District of Columbia

Commission Lawyer Appointed

HINMAN D. Folsom, formerly assistant chief examiner of the bureau of valuation of the Interstate Commerce Commission, has been appointed by the District commissioners special assistant corporation counsel of the District as lawyer to the public utilities commission, according to the *Washington* (D. C.) *Evening Star.* In this capacity he will handle legal matters for the commission and represent it in hearings and litigation.

Folsom for several months has been acting as consultant to the public utilities commission, in the work of briefing the mountain of evidence taken in the valuation and rate case of the Washington and Georgetown Gas Light companies. He has been a resident of Washington since 1925 and is a native of Seattle, Wash.

Florida

No PWA Funds for Canal

THE proposed Atlantic-Gulf ship canal across Florida is outside the normal, self-liquidating requirements under PWA regulations for repayment and amortization, a special board reported recently, according to the Federal Emergency Administration of Public Works.

The board, composed of Army engineers and PWA representatives, reported the canal could earn operating and maintenance expenses, but would not retire a bond issue even at a 2 per cent interest rate within a reasonable period.

The board had reported in June that the estimated cost of a 30-foot sea-level canal would be approximately $143,000,000, exclusive of interest during the 6-year period of construction.

Georgia

Phone Rate Compromise

A PROLONGED rate dispute between the public service commission and seven of the smaller telephone companies in the state was settled recently, with the companies accepting 75 to 100 per cent of the reductions in rates the commission ordered, according to *The Atlanta Constitution.*

Counsel for the commission said the settlement was regarded as a victory for the state, and that the companies accepted 75 per cent of the reductions on regular (or exchange) telephone rates, and the entire reductions ordered by the commission on hand-set charges, installation fees, and extra exchange line mileage rentals.

The companies accepting the cut are Cairo, Statesboro, Consolidated, Douglas, Dalton, Chatsworth, and Thomaston Telephone companies.

Three rate disputes with smaller companies remain unadjusted. They are with the Central, Southeastern, and Georgia Continental Telephone companies.

The commission's first order against the seven companies was enjoined in Federal court. The commission promptly issued another, which likewise was taken to Federal courts, but this time dismissed. A state court then granted the companies a temporary order, and the case was about to be referred to a master for hearing and recommendation. Under the settlement, litigation is to be dropped. The new rates were effective November 1st.

Idaho

Phone Company Files Appeal

IN an effort to have the recent decision of the public utilities commission affecting the rate for rural telephone lines in north Idaho set aside, the Interstate Utility Company has asked for a stay of the order and also has filed an appeal with the supreme court, according to the *Spokane Daily Chronicle.*

On September 19th the commission handed down a decision claiming that the present rate charged rural telephone users was too high and setting $4 a year rate to go into effect twenty days from that date.

Illinois

Edison Utility Defends Rates

THE initial introduction of evidence by the Commonwealth Edison Company, in defense of the reasonableness of its present electricity rates, against a rate reduction citation by the commerce commission, got under way before Commissioner Charles E. Byrne October 11th.

The utility, a $300,000,000 corporation, said to be the largest single operating unit of its kind in the world, was cited last May after it had refused voluntarily to revise its charges downward. The interests of 900,000 residential and commercial customers and 64,700 stockholders are involved in the investigation, which is the first ever formally directed against the corporation.

The company introduced evidence showing that by voluntary rate reductions, electricity charges were reduced 55 per cent between 1908 and 1933 as a result of the continuous improvements and operating economies developed by company research.

Indiana

Approve Municipal Plant Tax

RESOLUTIONS opposing the taxing of municipally owned public utilites were approved at the annual convention of the Municipal League of Indiana held recently in Fort Wayne.

The delegates also indorsed the resolution recommending the amendment of the present gross income tax law so as to exempt from its provisions the income from municipally owned utilities.

Henry S. Murray, mayor of Bedford, the youngest mayor in Indiana, was elected president of the league, succeeding Dr. Thomas L. Cooksey, mayor of Crawfordsville.

Iowa

Power Plant Case Halted

JUSTICE E. G. Albert of the state supreme court recently issued a stay order temporarily stopping Montgomery county district court proceedings in the case of the Iowa-Nebraska Light and Power Company of Omaha against the city of Villisca, according to a statement published in the *Des Moines Tribune*.

The case involves the power company application for a restraining order to prevent the city from erecting a municipal light and power plant.

The power company seeks to have declared invalid a contract between the city and the Electric Equipment Company of Des Moines which was to erect the plant.

The Montgomery county trial court dismissed the power company's petition September 27th and dissolved a temporary injunction it had granted previously.

Justice Albert issued the stay order on the power company's assertion that there are several other cases pending in various district courts involving the same legal point as does the Montgomery county case.

Main point at issue in all the cases, the petition claimed, is the question of constitutionality of the Simmer law under which the municipalities propose to build their own light and power plants.

Minnesota

Asks Wider Regulatory Powers for State Commission

A BILL broadening the powers of the railroad and warehouse commission to include supervision over rates and securities of private gas and electric companies and setting up a new valuation system will be presented to the legislature this winter, Knud Wefald, commission member, said recently, according to the *St. Paul Pioneer Press*.

The proposed bill would modify the 1915 laws under which rates and operation of telephone and transportation utilities now are regulated.

A revolutionary rate system, untried by any state, fixing a permanent rate base for every utility in the state as of July 1, 1935, would be put into application in the proposed act, most of which is patterned after utility laws in the states of Massachusetts, California,

New York, Indiana, Ohio, Illinois, and Wisconsin.

Municipally owned utilities would remain outside application of law except on petition of 75 per cent of the subscribers. Then they could be subjected to the same regulation and supervision imposed on private utilities.

An "inflation" clause in the proposed legislation empowers the commission to flex the legal rate of utility return "when and if the value of the dollar shall materially fluctuate from the value of the dollar at the time of the valuation." The commission "may adjust and readjust the rate of return to be derived by the utility," it is provided. The rate base or valuation determined as of July 1, 1935, however, is to remain constant, "inflexible and unchanged."

Montana

FPC Denies Extension

THE Federal Power Commission denied October 13th the application of the Rocky Mountain Power Company for an indefinite extension of time for completion of the $8,000,000 Flathead development in Montana.

Frank R. McNinch, chairman, said the denial had the effect of declaring the license in default. It was intimated in official circles that Public Works Administrator Ickes, who as Secretary of the Interior is guardian for the Flathead Indians on whose lands the project was started, has an eye on turning the development into a public works.

The development called for a dam 150 feet high across the Flathead river 4 miles below Flathead lake and construction of a power plant with initial installation of three 50,000 horsepower units.

Total cost was estimated at $8,000,000. The power company contended it already had spent $2,000,000 on the development.

While the decision of the commission would seem final, further action must be taken, according to reports from Butte. The Federal water-power law provides that the findings of the commission be referred to the Attorney General of the United States in order that he may appear in the local Federal district court to determine the licensee's equity in the project.

Nebraska

Rate Case in Federal Court

HEARING of the injunction suit of the Southern Nebraska Power Company against members of the railway commission and attorney general was set for October 29th in the Federal court at Denver before three judges, U. S. Circuit Judge Woodrough and U. S. District Judges Munger and Donohoe, according to the *Nebraska State Journal*.

Plaintiff seeks to enjoin enforcement of an order of the commission relative to rural rates in Nuckolls county. Complaint was filed November 1, 1933, claiming, among other things, continuation of a service charge outlawed by the state legislature. The commission ordered a new rate schedule effective last June 1st, providing a minimum charge, $3.50; energy charge of 7 cents per kilowatt hour for first 50 and 4 cents thereafter. The company rate has been minimum of $3.84, including first 12 kilowatt hours, 7 cents for the next 38, and 4 cents thereafter.

New York

Seeks to Duplicate TVA

FRANK P. Walsh, New York state power authority chairman, recently expressed the opinion that the government experiment in the Tennessee valley had "confirmed the practicability" of plans for development of the St. Lawrence for power and navigation, according to the *Associated Press*.

Returning from the valley after a first-hand inspection with other authority trustees, the chairman said he was convinced "what is being done by the TVA can be duplicated on the St. Lawrence river with beneficial results throughout New York, New England, and the middle Atlantic states."

"Our inspection convinced the trustees," said Walsh, "that nothing can stop the Tennessee valley project. Power interests which opposed the development in the blue print stage have been compelled by its success to withdraw open opposition to the government plan. An effort is still being made to deprive the public of some of the benefits of the TVA by insisting upon state regulation of its low rates, but this effort cannot succeed."

North Carolina

Duke Company Goes to Court

THE Duke Power Company's fight against Greenwood county's plan to build a $2,767,000 power development on the Saluda river with PWA money rests with the courts instead of the Federal Power Commission, according to the *Associated Press.*

After the power commission said it had been notified that the power company would not appear at the October 11th hearing on the proposal, already approved by a public works board of review, the Duke company officially issued a statement that opposition to the project would be continued with the battle transferred to the judicial field.

Company attorneys, the statement said, believe that the company "can more effectively and appropriately present its objections to the project in a court proceeding than in a hearing restricted to the limited issues presented to the Federal Power Commission."

South Carolina

Seek $35,971,910 PWA Fund

THE South Carolina public service authority recently filed formal application with the Public Works Administration for a grant and loan totaling $35,971,910 for the construction of the Santee-Cooper hydroelectric power and navigation development in lower South Carolina, according to an item in *The Columbia Record.*

The public service authority applied for a grant amounting to $9,339,144 and a loan of $26,632,766.

The total amount of the loan and grant sought is given as the construction cost of the huge development.

The creation of the South Carolina public service authority by the legislature in April was one of the high lights of the session. It followed the filing last November by the Columbia Railway and Navigation Company of its private application for the PWA funds necessary to construct the project. The private application was not acted upon and was not withdrawn.

It is the plan of the engineers to construct a dam on the Santee river and another on the old Santee-Cooper canal. The proposed hydroelectric plant will be located near Pinopolis, about 35 miles north of Charleston, and the transmission system would cover the eastern half of South Carolina and extend into North Carolina and Georgia.

Rate Cuts Total $1,400,000

A $1,400,000 reduction in annual electrical rates to the consumers of South Carolina has been the result of investigations made by experts of the railroad commission and from conferences between the executives of the power companies and the regulatory body. The reduction figures were contained in a statement by Thomas H. Tatum, chairman of the commission, according to *The Columbia Record.*

In addition to the actual saving in electricity, gas schedules have been revised downward slightly in several municipalities and a 20 per cent reduction in telephone rates is now in litigation in the supreme court.

Utility Faces Suspension

THE railroad commission recently ordered the Santee-Cooper Package Company of Moncks Corner to show cause why its right to operate as a public utility should not be suspended, according to *The Columbia Record.*

Dr. W. K. Fishburne, chairman of the board of trustees of the Berkeley county hospital had complained to the commission that power service was so irregular and undependable that activities at the hospital have been seriously handicapped.

The hearing was set for October 25th.

Tennessee

TVA Not under State Control

DAVID E. Lilienthal, TVA power director, told the railroad and public utilities commission recently that "my recommendation to the (TVA) board would be that we cannot, under the Constitution, voluntarily subject ourselves to state regulation."

Lilienthal, giving evidence before the commission in favor of the sale of Tennessee

Public Service Company holdings at and near Knoxville to the TVA, said that "the TVA plans to render electric service to the present customers of the Tennessee Public Service Company and such others as may care to take the service."

Texas

New Gas Rate Accepted

EL Paso's dual gas rate schedule, providing for 55-cent fuel, has been unanimously approved by the city council, according to *The El Paso Times.*

The new schedule, which allows consumers to choose between the present rate, slightly revised, and an optional schedule providing for fractional savings over the old rate after consumption passes 2,800 cubic feet per month, will apply to fuel consumed after November 10th.

Gas consumers must make final selection of their rate schedule for the next twelve months by January 15, 1935, according to notices to be sent to approximately 12,000 customers of the Texas Cities Gas Company.

Users who wish to remain on the old schedule were requested to notify the company of their choice before November 1st. Unless otherwise advised, the company will place customers on the new optional schedule, which calls for payment of $2 for the first 200 cubic feet of gas and 55 cents per thousand cubic feet up to 25,000 for the month.

Consumers, who are dissatisfied with their choice before January 15, 1935, will be changed to the other rate, company officials said.

Pipe-line Firms Must Conform

PIPE-LINE companies were given pointed warning recently that if they want to do business in Texas they must conform to regulations of the railroad commission, according to *The Austin American.*

At the first hearing of its kind in Texas, commission employees testified that certain companies seeking renewal of operating permits, or original permits, had violated the commission's orders by transporting "hot" oil, and recommended that the permits not be granted.

Virginia

Dam Awaits Power Threat Denial

OFFICIALS of the Appalachian Electric Power Company were quoted recently as saying the company will proceed more rapidly with the construction of its new river dam whenever, in the opinion of company counsel, it is demonstrated that Federal Power Commission threats are "not in good faith" and "the commission, so to speak, slept on any rights it might have."

Projects of the Appalachian Company, according to the *Associated Press,* are calculated by the company to produce enough power to light every home in Virginia. The company's moves have been interrupted by litigation involving proper licensing. The company operates in Virginia and West Virginia.

Washington

Seattle Weighs Power Plan

SEATTLE had a new problem in municipal ownership to consider when City Lighting Superintendent J. D. Ross recently laid out a plan to purchase all of the Puget Sound Power & Light Company's properties in western Washington and at Rock Island, in the Columbia river near Wenatchee, and to extend city light's operations and service throughout this vast area.

The value of these power company holdings was estimated by Ross at about $95,000,000 and, according to *The Seattle Daily Times,* he proposed that they be taken over with 30-year city light utility bonds at 5 per cent interest to be paid off out of earnings of the greatly enlarged municipal system.

The Latest Utility Rulings

Utility Must Stand Its Losses from Voluntary Competitive Rates

THE Massachusetts Department of Public Utilities, in revising rates of the Edison Electric Illuminating Company, expressed the opinion that an electric utility could not require customers receiving service under noncompetitive rates to stand the losses sustained under voluntary competitive rates.

The department reiterated a former opinion that except in unusual circumstances the department ought not to undertake to establish the entire rate structure of a company as this is a matter which falls largely within the field of management, and unless competitive rates are such as impose a burden upon customers paying under the noncompetitive rates or result in unreasonable discrimination the establishment of such rates should generally be left to the discretion of the company. Although thus recognizing this managerial function, the department said:

> On the other hand, where the noncompetitive rates, in times of business depression, continue to render the same revenue that they did in times of business prosperity, and in fact return a greater yield, and thus continue to return the same or a better return upon that portion of the capital devoted to that class of customers, we see no reason why we should hesitate to grant relief to that class of customers, merely because the company has suffered and is suffering a severe shrinkage in revenue from the competitive rates where it has been left largely free to establish such rates as it might determine.

Re Customers of Edison Electric Illuminating Co. of Boston (*D. P. U. 4439, 4444, 4678*).

Change from 25- to 60-Cycle Current Is Refused

A CIVIC organization outside of the city of Buffalo, New York, petitioned the New York commission to require a change in frequency from 25 to 60 cycles. The commission refused to compel such a change in view of the financial inability of the company and the unwillingness of consumers to pay any part of the cost of changing appliances.

The customers complained that they owned homes and paid taxes, yet if they wished to rent homes to persons who had lived in Buffalo, the prospective tenants found out they had to change cycle and pay greater rates, and therefore they would not move. Moreover, if the customers wished to purchase electrical appliances which were affected by cycle, they had to pay a higher price than if the current were 60-cycle.

The extra cost of appliances to be used on 25-cycle current was admitted by the company, but it protested that a change to 60-cycle current would involve radical changes in the entire substation equipment, transformers, meters, voltage, and street-lighting regulation. It would also mean duplicate construction during the change-over and the changing of consumers' meters, and in addition the consumers would have to change the major portion of their equipment. As an operating proposition, the present three-point connection for current supply would have to be changed to a one-point connection with interconnecting lines, which would impair continuity and efficiency.

The company had, during the previous year, made a substantial reduction in rates under order of the commission, and it was found that neither the company's operating income and rate of return nor its current funds and credit position warranted the expenditure which would be necessary for a change in current frequency, desirable as that in itself might be. *Re New York State Electric & Gas Corp. (Case No. 8246).*

Voluntary Services by Utility Not Credited against Assessment for Regulation

IN Wisconsin, as in some other states during recent years, public utility companies have been assessed for the cost of regulation. The Wisconsin law places a restriction upon the amount to be assessed against the company. Objection was made by the Wisconsin Telephone Company to bills rendered by the commission on the ground that the commission had exceeded "the four fifths of one per cent assessment when we consider the bills rendered, 'plus salaries, wages, and traveling expenses of employees of said telephone company who have been temporarily loaned or transferred to and who performed labor and services and incurred traveling and other expenses during 1934 at the request of said commission.'"

The commission overruled this objection with the statement that it did not consider that the services of the persons listed in the objections were a proper charge against the commission, or, as the company expressed it, to be treated as a credit in favor of the company against the four-fifths assessment. The commission said:

> These persons, as we look at the situation, continued as employees of the telephone company, worked telephone company hours, were obliged to comply with the telephone code, did not have their pension rights abridged nor did they in any other way suffer an interruption of employment by the telephone company.
>
> Their services were a gratuity. We have always so understood it.
>
> We are now advised, however, that the company takes a different view of the matter. Under these circumstances, we do not desire to utilize the help of these persons any longer than the company is willing.
>
> We recognize that these individuals have rendered substantial assistance to us in this task of investigation and we desire to express our appreciation.

Re Wisconsin Teleph. Co. (2–U–35 et al.).

No Dedication of Utility Facilities to Unprofitable Branch Service

A FEW years ago the Service Transit Company took the place of the Helena Electric Railway Company, which had been rendering street railway service in Helena, Montana. A small community within the city limits did not receive street railway service, but upon representations of prospective patronage the motor carrier company extended a branch line to this community. Patronage failing to develop, the Montana commission has permitted abandonment of the branch.

It was urged by patrons that the commission should deny authority to abandon if the company were making a fair return upon the system as a whole. The commission stated that it was familiar with the general principle which the protestants had in mind, that transportation companies must take the lean with the fat, but it did not believe that

it had application to the present state of facts. It was noted that the company was not earning a fair return on the value of the properties devoted to the public service throughout its whole system. Moreover, operations on the branch produced only about 42 per cent of the cost of rendering the service. The circumstances under which the branch line had been established also entered into the decision apparently. The commission said:

> In establishing the service on this branch under the circumstances indicated, it may not be contended that Service Transit Company made an irrevocable dedication of its property to the use of the public at Lenox. The viewpoint must be indulged that it established service, that is, devoted its property to this public service upon the assumption that the community would supply sufficient traffic on a reasonable basis to yield the operating costs and a fair return. It having been developed here that there is no disposition upon the part of the community to make a reasonable use of the facilities offered and that future operations on the Lenox branch must be at a loss, applicant has the right to discontinue this unprofitable operation.

Re Service Transit Co. (Docket No. 1755, Report and Order No. 1653).

Rate Increase through Change in Classification Must Be Approved

SERVICE was rendered by a telephone company in Nebraska to a lumber yard with an extension telephone to an ice house. The extension service was furnished under an agreement at a specified rate during five months of each year. When the company refused to reconnect the extension service one year, the commission ordered reconnection.

The company sought to justify its refusal to furnish extension service by asserting its right to change the classification from business extension service at the business extension rate to regular business service at the regular business rate. The commission, however, ruled that while it did not hold that a telephone company cannot lawfully change its classification of service without approval of the commission, where such a change results in an increased rate the change cannot lawfully be made unless agreed to by the patron or upon application to and an order by the commission. *Malone-Gellatly Co. v. Farmers Independent Telephone Co. (Formal Complaint No. 762).*

No Deductions Allowed in Determining Gross Earnings for Tax Purposes

THE Arkansas Supreme Court on rehearing has affirmed a judgment of the Pulaski Circuit Court which directed Commissioner of Revenues Earl R. Wiseman to collect a tax on the gross income of the Fort Smith Gas Company for support of the state fact finding tribunal. It has been stated that the existence of the tribunal depended upon favorable court action in this case, since the tribunal would have to cease operations for lack of funds if these taxes could not be collected.

The law of 1933 which created the fact finding tribunal fixed a tax of $2 on each $1,000 of gross earnings as a fee for the fact finding facilities provided by the act. Last June, by a four-to-three decision, the supreme court held that the term "gross earnings" meant the difference between the amount the gas company paid a pipeline company for the gas and the amount received from customers for sale of the fuel. Under this decision, it was held that the tax should be col-

lected on $192,819.82 instead of on $407,588.83, the amount received by the company for the sale of the gas.

A petition for rehearing was filed, and on account of the death of one of the judges a new judge was appointed to the court. The position taken by the new judge resulted in the recent ruling. The court states in this opinion:

> It will be observed that the word "fee" is used instead of "tax," and we think that word is used in the sense that it is a "charge fixed by law for services of public officers or for the use of a privilege under the control of the government." The charge made is of the same kind and class as that usually made, as authorized, by statute, in municipalities for license fees, which are assessed or fixed by city councils, not as revenue charges, but in order that the regulations, inspections, etc., may be had without expense to the municipality. The law in such matters is too well known and recognized to require citations or authorities.

The conclusion reached was that the term "gross earnings" meant the entire receipts without deduction for any expenditure or any cost of operation or other expense or cost of the service. A dissenting opinion was written by Mr. Justice Smith who stated:

> There is nothing to indicate that the general assembly did not use the term "gross earnings" in the sense in which it is ordinarily employed and as ordinarily understood, and if this is true it cannot be interpreted as meaning the collection of invested capital used to purchase an article bought for resale, which it would be if the gas company is required to pay a tax on the purchase price of the gas which it bought to distribute and resell.

Re Fort Smith Gas Co.

Return of 33 Per Cent Held Excessive for Municipal Plant

THE Wisconsin commission, upon investigating the rates of the city of Princeton, which operates an electric utility, found that a return of 33 per cent was indicated on the rate base, and the commission in ordering a rate reduction held that a return of 6 per cent was reasonable.

The commission in this case, as in several other recent cases, recognized that in the electric industry a large portion of the costs of rendering service is not only fixed but incurred jointly for all classes of customers. Under these circumstances, it was said, it is difficult to state precisely the total cost of serving any one group or any individual customer. Still it was said to be essential that the cost of service be recognized both in the form of the rate and in the price charged if unreasonable discrimination is to be avoided and the fullest use made of the utility's investment. The commission approved a fixed-charge form of rate. *Re City of Princeton (2–U–690).*

New York Commission Orders Electric Rate Reduction

A TEMPORARY reduction of 20 per cent in electric rates, effective November 1st, has been ordered by the New York Public Service Commission in the case of the Bronx Gas and Electric Company, a subsidiary of the Consolidated Gas Company.

The estimated annual savings to customers approximate $520,000. This reduction, said Chairman Milo R. Maltbie, will remain in effect until a final determination is made in the rate proceeding.

It was found that, according to the company's own figures, the rates now being charged yielded $431,800 in excess of a 6 per cent return. After adjustments of the company's figures, the commission found that the company earned $483,000 in excess of a 6 per cent return. Chairman Maltbie stated

that "As 6 per cent is more than business enterprises which are not regulated have obtained upon the average during this depression, it is apparent it is the maximum rate which should be allowed." It was pointed out that a reduction of $520,000 in operating revenues would not mean the same reduction in operating income available for return, since four taxes which the company pays would be considerably reduced. *Re Bronx Gas & Electric Co.*

Other Important Rulings

THE United States Supreme Court denied a review of a lower court decision upholding the action of the city of Paragould to construct an electric light plant. The Arkansas Utilities Company claimed that the plant would enter into competition with its own plant and have the effect of destroying its business and property. It claimed ownership of a franchise which prohibited the city from constructing a competitive plant. *Arkansas Utilities Co. v. Paragould.*

The United States Supreme Court found that the West Ohio Gas Company had shown jurisdiction in an appeal from the Ohio Supreme Court upholding a commission order fixing rates for gas supplied to customers in Lima, Ohio. *West Ohio Gas Co. v. Ohio Public Utilities Commission.*

The Iowa Grange Power-District bill has been held unconstitutional by Superior Court Judge J. J. Jeffers on the ground that property owners are not allowed an opportunity to express their wishes as to having their property included in the districts. This ruling, unless reversed by the state supreme court, would prevent putting the question of forming a power district in Lincoln county before the voters in November. The judge overruled a demurrer by the county commissioners against the injunction sought by the Washington Water Power Company, the Great Northern Railway Company, and the Northern Pacific Railway Company to prevent the question from going on the ballots.

The Montana commission, upon authorizing a company to abandon public utility heating service, recognized the right of the company to withdraw from public service upon reasonable conditions. It attached conditions that sixty days' notice be given and that an opportunity be afforded to customers to operate the heating plant until the end of the heating season. *Re Valley Mercantile Corp. (Docket No. 1709, Report and Order No. 1652).*

The state supreme court of North Dakota upheld the right of the city of Devils Lake to issue $400,000 in special obligation bonds for construction or acquisition of a municipal electric plant. The court held that the board of railroad commissioners had no authority to determine, supervise, or regulate rates or charges fixed by the city where voters had authorized the purchase of such a plant, with costs to be paid from net earnings. The court ruled that it was not necessary to secure a certificate of convenience and necessity from the railroad commisioners. *Thomas v. McHugh et al.*

An order of the Pennsylvania commission requiring a water main extension was sustained by the superior court where the prospective revenues would be approximately 10 per cent of the cost of the extension and the company could file a general rule to protect itself against service applications by applicants who might withdraw from their commitments. *Latrobe Water Co. v. Public Service Commission (No. 453).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

Appendix

Important addresses on questions of public interest delivered at the annual convention of the Section of Public Utility Law of the American Bar Association at Milwaukee, August 27 and 28, 1934.

Government Ownership and Competition

By HENRY G. WELLS*

CUSTOM has decreed that the chairman of the Section shall deliver an opening address. Your present chairman yields to that custom but desires at the outset to make it clear that while the address may be construed as official, the views expressed are wholly unofficial and merely the personal ideas of the individual. And it may very well be that these ideas have little in common with the strictly legal problems of utilities. However, in view of the general tendency of the time in mixing law and economics, a little overemphasis on the economic side may not be out of place. And anyone interested solely in public utility law must at least be sufficiently interested to keep enough of the industry alive to provide legal problems for somebody to solve.

GOVERNMENT ownership of this and that has been a fruitful topic of discussion for years. Its popularity has ebbed and flowed. But always the honest believers in such doctrine have assumed that the government, whether Federal, state, or municipal, would take over the existing property rather than create new, and would compensate the existing owners of whatever property it so took over. And certainly the owners of property susceptible to government activity had assumed that there was some legal support for such a theory. Many statutory provisions recognize it and the decisions of the courts interpreting the Fourteenth Amendment have certainly gone so far in the recognition of property rights that it would seem that at least the courts would allow the owners to get something for their property. But now governments are going into the electric business in competition with the existing companies, disregarding largely the interests of owners of the latter, not buying them out but forcing them out without compensation, and the sole purpose alleged is to provide a "yardstick." What will be left to measure with the yardstick after the various governmental agencies have finished is problematical.

APART from the legal right to enter into such competition is the questionable judgment of such governmental activity, particularly after millions of citizens have invested in business enterprises with the usual attendant risks of such investment but not anticipating such a risk as government interference. Someone has recently said: "Government competition does not fall within the class of ordinary risks because every citizen has the right to suppose that his government will not use the power and resources of all the people to destroy the business, the savings, and investments of a part of the people." But if the government must go into competition, the least that could be expected from it would be fair competition. Instead, while ostensibly launched on a crusade to do away with unfair compe-

*Chairman of the Section, member of the Massachusetts Department of Public Utilities, and former president of the National Association of Railroad and Utilities Commissioners.

tition, by its own acts it creates unfair competition. It attempts to force the industry into compliance with code provisions which it does not itself live up to. It strives to raise prices of materials and labor in use in the industry and when the industry coöperates to that and while not looking for praise it is met with accumulated and persistent abuse and a demand for lower prices of its own commodity. Additional and special taxes are levied on the industry and the government competitors are specifically exempt; and revenue from such taxes paid by the industry and by the owners of the industry is used in part to finance the government competitors. It is a new thought in government that tax revenue be used to impair the source of such revenue.

LOANS are made to municipalities to establish plants in competition with existing ones. But above all, millions, yes perhaps it will total billions, are being spent by the Federal government in establishing its own competing plants. While one of the important aims of the government crusade is to reduce and prevent, so far as possible, overproduction, yet the capacity of existing plants is far in excess of possible use, not only in the country as a whole but particularly in the areas where government competition is already being set up. In the area of the Tennessee valley or Muscle Shoals development, only one half of the available capacity of existing plants was being used and only one third of such capacity was being used in the Columbia river area, where two other large government plants are being constructed.

From the best figures available, in the country as a whole, the industry operated at an average of 36.2 per cent of its capacity in 1929 and at only 26.3 per cent in 1932. Yet still other plants are in contemplation. But it is sometimes answered that large tracts of land are being made available for agricultural purposes by these tremendous expenditures, yet the cabinet member in charge of agriculture has stated that he desires to do away with one third of that land now in use and they are even paying owners of such land for not producing. It looks like more work for the A. A. A.

WHAT reasons are given for the present attitude of the government? What is the cause of the existing feeling on the part of a substantial portion of the public? This attitude and feeling undoubtedly in large part are due to the spectacular collapse of certain holding and interrelated companies and to abuses that have grown up in times of depression in other such companies. But this attitude and this feeling fail to distinguish between such companies and the operating companies. Excessive issuance of securities and so-called write-ups of such companies is in no way overcapitalization of operating companies. Payments to the former by the latter for various kinds of services and other so-called up-stream payments can be curbed with proper state legislation and state regulation. These holding companies unable to meet such requirements will have to reorganize or disappear.

Nothing too severe can be said about certain practices that have come to light in the last few years, but these practices do not justify such wholesale condemnation of an entire industry or the unfair denunciations sometimes directed at all the individuals engaged therein. Certain bankers were guilty of unfair practices, but the whole banking industry is not thereby put on the spot. We do not expect to do away with legal or medical professions because there are dishonest lawyers or medical fakers. Such evils as continue to exist can be weeded out without destroying the entire industry.

BUT what is to be the result of the present agitation and activities? The faults of the holding companies are to be remedied by destroying the underlying operating companies. The losses to investors in holding company securities are to be compensated for by greater losses to investors in operating company securities.

If government officials are interested in the security holder, the small investor, as some spokesmen have alleged, are they aware that taking the low base of January 1, 1933, such investors in utility securities have incurred losses that make the Insull losses, as someone has described it, like penny ante losses. For illustration, taking five first mortgage bond issues of five operating companies in the Muscle Shoals area, the price index in the aggregate for January, 1933, was 88.2 and for November, 1933, was 58.2 or 41.8 below par value. Let me also quote from a recent letter written to a daily newspaper by a utility investor:

> The TVA, in purchasing the property of this company (under threat of duplicating its facilities), has paid a price for the company's property, which, after providing for the bonds, will allow the princely sum of between $35 and $40 per share for the preferred stock. . . .
>
> The common stock obviously becomes worthless.
>
> Therefore, I think that all investors, particularly public utility shareholders, and more particularly those threatened with confiscation by the duplication of facilities by the TVA, should without reservation support the "New Deal" and the administration, 100 per cent in its campaign for the "establishment of the golden rule in the temples of high finance" and "general happiness for all," except those wicked men and women who have been so sinful as to save a few dollars and invest them in American industry.

BUT not alone the individual investor is affected by these policies. Every insurance policy holder, every bank depositor whether savings or commercial, all those interested in colleges, schools, churches, hospitals, welfare institutions, fraternal organizations, that hold these securities are vitally interested. It is safe to say that more than half the population of the country is directly or indirectly affected by the present situation.

It may be said that reference to destruction of an industry is altogether too strong language but there are already strong indications of what is going to happen. In the Muscle Shoals area, where already there was twice the needed potential capacity, the business of the private companies is being raided. In the Columbia river area, as has already been pointed out, there is three times the needed capacity.

Only three things can happen. The market must expand tremendously to absorb such a large increased capacity without detriment to the private companies. That would seem to be impossible. The other two possibilities are that the private plants will be forced out of business or the public plants will fail. The latter will never be allowed to happen, no matter what may be the resulting deficits and burdens on the taxpayers. No, the yardstick is more like the ruler of olden schoolboy days, except that it is to be applied alike to the well-behaved as to the incorrigible.

WHAT is being done to bring this situation home to those directly and indirectly interested? Very little, as yet. While propaganda of a misleading type, without support of reliable statistical evidence, is continuously being circulated, to the detriment of the industry, the industry itself has been so brow-beaten and intimidated that it apparently dares not reply for fear of further political assault. Many statements thus circulated are obviously untrue, yet go unanswered and hence are believed by a multitude of citizens. Take as an illustration this quotation from a distinguished United States Senator, clipped recently from a religious publication which goes into the homes of a large number of members of a powerful denomination:

> The amount of taxes the corporations pay amounts to only a few mills per kilowatt hour, but they double the price of their product and cry out that they must do so to pay their taxes.

I doubt if the Senator can point out a single company in the country that has doubled its rate in the last ten years or longer when taxes have increased in far greater proportion than any other expense. Certainly in so far as the recent 3 per cent levy is concerned, which was removed from the customers and

placed upon the companies, most companies that I know of have absorbed it without increasing the rates at all. Yet, so far as I am aware, that statement is still being circulated and has not yet been challenged by the industry.

Many foolish and improper activities were undoubtedly engaged in by the utilities, and much of the criticism was justified. But should not the critics be bound by a similar code of fair conduct? And if the latter disseminate misleading and false information, are the utility companies to be estopped from making answers and corrections?

IT is significant that the Federal Trade Commission was authorized to investigate only propaganda against government ownership. Have not the advocates of private ownership the same right to set forth their side of the question as the advocates of public ownership? If the latter can talk their doctrines from the public platform, teach them in schools and colleges, write them in newspapers and magazines, will they deny the same right to the former? Freedom of speech is still guaranteed by the Constitution and it ought not to be lost, whether such loss is occasioned by law or by political intimidation.

The American people have an innate sense of fair play. They should be allowed to learn the true facts with respect to these important questions. They should be given the opportunity to exercise that sense of fair play.

Regulation of Public Utilities

By RICHARD T. HIGGINS*

I will confine my remarks to some general and more or less personal thoughts pertaining to regulation of public utility companies, without attempting to analyze and quote from the numerous judicial, scientific, and expert opinions which deal, sometimes conflictingly, with practically every phase of regulatory power and procedure. The subject has been so thoroughly discussed that I do not expect to contribute any material enlightenment. The decisions of the United States Supreme Court alone, on matters pertaining to Federal and state regulation of railroads and public utilities, if compiled as a separate work would represent many volumes, and I am going to assume that you, as members of the American Bar Association and interested in utility problems, are familiar with all of these decisions. If I am wrong in my assumption, it is because I am attributing to you far more knowledge of our Supreme Court decisions than I can possibly hope to have.

Fundamentally, regulation is an administrative and not a judicial function although, at times, it necessarily partakes of a semi- or *quasi*-judicial nature; but commission procedure, generally, should be legislative and not judicial. The powers of a regulatory body are limited by the powers directly or impliedly granted to it by legislative enactment as part of the police powers of the state and naturally can be no greater than the powers which the legislature itself has. The powers of state regulatory commissions are diverse, depending upon the legislative enactments of the several states, as up to the present time there is lack of uniformity in state legislation in this matter.

STATE commissions and the police powers of the state are limited by constitutional provisions to state matters or intrastate business, as distinct from interstate commerce over which Federal authority is paramount. The Federal

*Late Chairman of the Connecticut Public Utilities Commission and President of the National Association of Railroad and Utilities Commissioners; deceased September 16, 1934; address read before convention.

government, through its authorized departments, has been justly insistent that no state authority shall infringe upon the natural and constitutional powers of the Federal government, and the several states have tried to be insistent in reserving and preserving their natural and constitutional powers over purely state matters but the gradual tendency, which has been taking place, of transferring the reserved powers of the state to the implied powers of the Federal government, increases the difficulty of drawing the line of demarcation between state and Federal jurisdiction.

The surrender of individual rights and responsibilities to the municipality, and by the municipalities to the state, and by the state to the Federal government, is creating a centralized power never contemplated by the union of states, but the rapid development of industry, particularly industry engaged in interstate commerce, necessitates Federal authority under the brief clause in the Constitution giving Congress power to regulate commerce with foreign nations and among the several states.

THE broad powers of the Federal government under the provisions of the Fourteenth Amendment of the Constitution have been repeatedly invoked in connection with utility regulation of intrastate business. The so-called Johnson Bill (§ 752), passed by the recent session of the Congress, should have the result of preventing unnecessary Federal intervention and injunction in purely intrastate business. In such cases state courts have jurisdiction to protect both state and Federal constitutional rights of parties.

State commission regulation of steam railroads originated about the middle of the past century. Federal regulation of railroads engaged in interstate commerce was vested in the Interstate Commerce Commission in 1887 and state regulation of public utilities generally originated during the first decade of the present century and, today, every state in the Union except Delaware has a commission exercising varying degrees of regulatory authority over railroads and public utilities.

In the operation and regulation of utilities, as in other lines of endeavor, there are certain cardinal principles, even in these times of rapid regeneration, which must be taken into consideration, such as natural and inescapable economic laws, long-established constitutional rights, and the everlasting principles of legal justice.

PUBLIC utility companies supply the people of the Nation with a service absolutely essential to their comfort, happiness, and prosperity in life, and no form of industry is more constantly exploited, politically attacked, and governmentally supervised than the utility business. The utility industry is today very much in the public and political limelight and state commission regulation is not entirely free from criticism. We may well assume that some utilities have failed in the ethical and financial principles of fair dealing and that state commissions have at times erred in their policies of regulation. To assume otherwise would be contrary to the well-known frailties of human nature and the fallibility of human judgment, but isolated cases should not smear the whole with the tar of dishonesty.

My experience covering a period of twenty-four years in regulatory work leads me to believe that utility executives measure up in honesty, integrity, and ability with the executives and managerial officers in business generally, and that state commissioners, as a whole, are as true to their oath of office and assumed public duties as any class of governmental officers in the country.

The rendition of adequate service at reasonable rates is the prime obligation of utility companies and the enforcement of this obligation is the principal duty of a regulatory commission. Adequate service is the just demand and the legal right of the public. Reasonable rates are of like importance but the expression "reasonable" applies with equal force to the patrons as well as to the utility, for when the utility fails

to receive a reasonable price for its service, adequate service cannot be permanently maintained and patrons and communities served become the principal losers. In the regulatory field, in recent years, many legal and technical complications have developed making the administrative function of determining just and reasonable rates an increasingly difficult task.

The mergers, expansions, intercorporate relations, interstate transactions, and extraneous corporate financing of utility companies, coupled, in many cases, with a supertechnical and extremely complicated rate structure, add to the difficulties and confound the experts.

THE determination of the rate base or the amount in property dollars upon which the utility is entitled to earn a fair return, and the rate of return upon such rate base, are the principal issues involved in a rate case. Principles of rate making and the method of determining the rate base or fair value of the utility property used or useful in the rendition of public service were carefully considered and a general policy laid down by the United States Supreme Court in the early and often quoted case of Smyth *v.* Ames. This case definitely determined that the fair value of the utility property at the time of the investigation is the measure in dollars upon which the utility company is entitled to earn a return and that in determining the fair value or rate base, certain indices of value such as cost of reproduction new less accrued depreciation, original or historical cost, and the amount expended in permanent improvements must be taken into consideration. The trend of numerous court decisions subsequent to the Smyth *v.* Ames Case down to the recent and possibly continuing economic depression, while following the general principles laid down in the early case, has been to give increasing weight to cost of reproduction new less accrued depreciation, so that the principal guide for determining fair value became the reproduction cost of the property new less accrued depreciation at prices current at the time of the investigation. State commissions, some of them somewhat reluctantly, followed court rulings giving dominant weight to reproduction cost appraisals.

DURING the high price levels from about 1918 to 1930, reproduction cost appraisals, at current prices less accrued depreciation, were materially more than the book value or historical cost. Book value or historical cost is an amount that should be easily and accurately determined from an examination of the company's books, if properly kept, and closely represent the amount of money actually invested in the plant and equipment designed to serve the public. A reproduction cost appraisal is necessarily somewhat theoretical in attempting to say what it would cost today to reproduce new a more or less ancient plant, some units of which may have become obsolete, and the final result is largely an opinion estimate concerning which separate, reputable engineering firms may, and usually do, materially differ. An inventory and appraisal of all the units (and usually none are omitted) of a utility company is an expensive undertaking, and all of the expense is ultimately borne by the ratepayer.

I do not wish to discredit the importance of a scientific appraisal of property to determine its present fair market value, but utility property stands in a class by itself. Utility companies receive governmental grants not for the purpose of carrying on a business to make money, but as governmental agents for the specific purpose of supplying the public with a necessary service. The reasonable cost of that service, including a fair return upon the necessary investment of capital, is the right and just demand of a utility business, honestly and economically managed. There may be an equitable variance in the rate of return depending upon the economical and successful management of the company.

RECENT decisions of the United States Supreme Court seem to indicate that case law is undergoing a material change respecting the establishment of public utility rates. There appears to be a widening and upholding of commission discretion by looking through the form to the substance of their decisions. While fair present value rather than original cost remains the essence of the rate base, the weight to be given the various indices of fair value in determining the rate base is changing in favor of original cost instead of reproduction cost, and "going concern value" and "cost of financing" are being eliminated as intangible elements of property. This inference is drawn from recent decisions, particularly the Los Angeles Electric Corporation Case, decided May, 1933; Clark's Ferry Bridge Company *v.* Public Service Commission of Pennsylvania, decided in 1934; Dayton Power and Light Company *v.* Public Utilities Commission of Ohio decided also in 1934: and other recent United States Supreme Court decisions. The thought expressed in the dissenting opinions of Justices Holmes and Brandeis, during the past decade, is today finding favor.

It is unfortunate that formal rate investigations are generally so protracted and so expensive. Amicable persuasion has a favorable influence and often accomplishes more than a bitterly contested controversy. Friendly negotiation between the utility and responsible representatives of its patrons, with the informal advice and assistance of the commission and its technical staff, might be resorted to in many cases.

THE exercise of sane and sound judgment by trained and reasonable men in negotiation proceedings should result in a fair and equitable adjustment in most cases, and result in the elimination of red tape, the elimination of the expense of an elaborate inventory, and appraisal of every unit of property and accounting items, and the avoidance of an acrimonious trial and annoying delay. Regulation by conference between the commission and the utility is an effective way of avoiding expensive trial and litigation. In such regulation, to be successful, the commission must have and merit the public confidence, and there must be honest coöperation between the commission and the utility.

Ordinarily the management and managerial policies of a privately owned utility company should remain in the hands of its executive officers who are, or should be, familiar with the arts of the particular industry and with the necessary development to meet future demands of the public. Regulatory commissions with their numerous duties pertaining to many different classes of utility operations may not be qualified and should not be expected to act as executive or managerial agents of the several companies, but whenever there is found to be a destructive managerial policy or flagrant violation of sound executive judgment, the commission should take such action as will necessitate a change and correction of the company's policies for the public's interest.

THE question of government regulation of holding companies is receiving much consideration. Holding companies, to my mind, may have a proper and legitimate place in connection with the financing and economical operation of operating utility companies. The unregulated and uncontrolled activities of holding companies, however, particularly in connection with the financing of their subsidiary companies, may result, and in certain cases have resulted, disastrously for the operating companies and their patrons.

There are some marked disadvantages in connection with holding company control, even though well and honestly managed. It takes away the spirit of community interest as the officers having any degree of corporate control are usually far removed from the local activities of the operating company. It tends to militate against the important factor of good relations between the

utility and its patrons, and it creates the unfavorable condition of the commission's having to deal with local officers having no real authority.

In the absence of government regulation of holding companies, operating companies and their patrons should be reasonably protected by a state commission having complete regulatory jurisdiction over the operating company, including the issuance of securities. Operating companies should not be permitted to loan funds to the parent or holding company without approval of the commission, and any management fees, interest, or other charges made by the holding company should, in every case, be carefully analyzed and passed upon by the regulatory commission. The official books, records, and accounts of a utility company engaged in intrastate business should be kept in the state and at all times subject to the inspection and jurisdiction of the state commission.

THERE is a small minority and, just at present, a possibly increasing minority in favor of government ownership and operation of all utilities. Personally, I am opposed to any such theory, principally because I believe it is no part of the functions of government to engage in business enterprises in competition with its subjects upon whom it must depend for governmental revenues and general governmental support.

There are thousands of able executive and other officers and employees of privately owned utility companies, trained in the art and science of their respective industries, inspired in the performance of their duties for the success of their companies and the natural hope of reasonable profit and reward. If complete governmental regulation of the rates and services, finances, and general operations of the privately owned utility industry fails, it is not logical to expect that government ownership and operation, under more or less political management, will be more successful for the interest of all the public. It is true that an individual or a private corporation may become financially embarrassed and incapacitated from carrying on, but it is also possible that even a nation may become so financially situated that it would be neither just nor equitable to pour public funds into a losing enterprise.

WE are going through a rapid evolution of business and economic policies, an evolution in our civic and social life whereby even the minute details of our personal and corporate activities are subject not only to scrutiny but to mandatory dictation. A large part of our time as a people, or rather a large part of the people, is engaged in watching and directing the other fellow. This is an unsound and wasteful policy and should not be necessary. That evils have crept into our social and business structure is undeniable, that greed and profiteering have marred the banner of the utility industry is unfortunately true, but I still have an abiding faith in the business integrity and common honesty of the great mass of our American people, by whom and for whom our laws are enacted and enforced.

The character, ability, prosperity, and happiness of the people of any country are the measure of its greatness as a nation. We, as Americans, feel justly proud of our great country; we, as students of law, cherish the principles of constitutional government; we, as observers of history, know that this comparatively new nation in the western hemisphere was builded to its preëminence by individual initiative and private capital, fostered by a Constitution and form of government designed to promote and protect individual liberty, life, and property. This nation differs from most European nations. It was developed and it prospered under a government of laws and not of men, and to my mind one of the principal duties of this great organization, the American Bar Association, is to see to it that that form of government shall continue.

Emergency Rates and Due Process

By ELMER A. SMITH*

PAPERS [1] read at the meeting of the Section in 1933 directed attention to the increasing tendency of commissions to enter emergency or temporary orders requiring reductions in rates. An impetus has been given to the entry of such orders by the recent passage of laws specifically authorizing commissions to fix temporary rates, as well as by the continuance of the depression.[2, 3] These orders and statutes but give articulate expression to the feeling prevalent in many quarters that reductions in rates, particularly in days of economic stress and strain, should be more easily and promptly accomplished.[4]

It has been said [5] that where an emergency exists, the constitutional principles applicable to the protection of property from confiscation may be temporarily modified, or may be set aside entirely, and that this relates to procedure as well as to return.

It has also been suggested [6] that commissions should be made definitely legislative, conducting such inquiries and granting such hearings only as seem desirable.

THE governor of New York, in supporting a bill authorizing the state commission to fix temporary rates, recently said [7] that the state was not seeking a law governing permanent rates, that permanent rates were based upon the Constitution of the United States which the state of New York could not change if it wanted to, the implication being that temporary rates are beyond the pale of the law.

It seemed, therefore, that it would be worth while for the Section to consider, particularly in the light of recent cases, whether due process of law, even in these days, controls the action of a commission in entering a temporary or emergency rate order.[8] It will be my purpose to discuss this question primarily from the standpoint of procedural due process, of due process in its primary sense.[9] As stated by Mr. Justice Brandeis,[10] in the development of our liberty insistence upon procedural regularity has been a large factor.

The first question that presents itself is whether due process requires a hearing before a commission may enter an order fixing temporary rates. It may seem at first blush that this is merely an academic inquiry, yet the cases show that within the past year it has been a practical question.

THE Supreme Court recently had before it [11] an order of the Interstate Commerce Commission,[12] entered without a hearing, requiring certain railroads to establish joint rates with a barge line. The commission had entered the order under the authority vested in it by a recent act of Congress known as the Denison Act,[13] the purpose of which act, so the commission had found,[14] was to substitute for hearings prior to its orders establishing joint rates, subsequent hearings upon complaint of an aggrieved party. Plainly, changes in rates could be quickly effected if hearings could be postponed until the rates had actually been established. The lower court held [15] that the order was in contravention of the due process clause. During the argument of the case in the Supreme Court, counsel for the government stated that if the railroads filed a complaint with respect to the rates thus required to be established without a hearing, the commission would be bound to grant a hearing before making the rates effective. This concession had not theretofore been made. The court said that the constitutional question raised by the railroads thus vanished from the case, because the commission stands ready to grant every administrative procedural right

*Head of Law Department of the Illinois Central Railroad in Chicago, and member of the Council of the Section of Public Utility Law.

that the railroads are lawfully entitled to claim.[11]

It would seem, however, in view of another recent decision of the Supreme Court [16] that had the court been required to determine whether the Interstate Commission may fix rates without a hearing, it would have held squarely that the commission possesses no such power. The court there held that a state statute which authorized an administrative officer to require railroads to eliminate grade crossings whenever necessary for the public safety and convenience, but without prior notice and hearing, violated the due process clause. The court said that even if it be assumed that the legislature without a hearing might by direct order require the elimination of a grade crossing, it by no means followed that an administrative officer might do so, that there is a difference between legislative determination and the finding of an administrative official not supported by evidence, that in theory, at least, the legislature acts upon adequate knowledge after full consideration and through members who represent the entire public.

The recent amendment to the Illinois Commerce Commission Law [3] does not expressly provide for a hearing. The commission seems to have construed the act, however, as requiring a hearing before it may fix temporary rates.[17] It appears from one of its recent orders fixing temporary rates that the record consisted of 5,840 pages and 83 exhibits, which indicates that the facts had been developed in some detail. The Illinois commission in construing the statute as requiring a hearing has undoubtedly avoided litigation. The recent amendment to the Public Service Law of New York [2] empowering the commission to fix temporary rates, expressly provides for notice and hearing, as does the Virginia statute.[3a]

Courts that have had occasion to consider the validity of temporary orders have held that the utility is entitled to a hearing,[18, 19] the court in one case [18] stating that there was not due process of law in the hearing that was accorded.

It hardly seems probable that the Supreme Court in this respect will depart from the principles that it has repeatedly announced in dealing with the validity of decisions of the Interstate Commission. The Interstate Act requires a hearing, but the Supreme Court has not placed so much emphasis on this provision of the act as upon the constitutional right of a carrier to a hearing before the establishment of rates. In a leading case [20] the court said that it had been distinctly recognized that administrative orders, *quasi* judicial in character, are void if a hearing was denied, and this principle has been reiterated in a long line of cases involving orders of both the Interstate Commission and the state commissions.[21]

It has recently been suggested, as stated,[6] that the commissions should be converted into legislative bodies, granting only such hearings as seem desirable, leaving to the courts the responsibility of determining whether the rates fixed are confiscatory or otherwise unlawful. It would seem that any such plan would present grave questions respecting the delegation of legislative power,[22] wholly aside from the question whether it would be desirable in the public interest to transfer to the courts the real responsibilty of holding formal hearings respecting utility rates.

But what kind of hearing will meet the demands of the due process clause? What are the attributes of such a hearing?

It is perhaps but a truism to say that this will depend upon the particular facts in a particular case. We are here not dealing with a particular case but with principles. And it is believed that what the courts have recently said may throw some light on the kind of hearing in a proceeding involving temporary rates that will satisfy the due process clause.

The Supreme Court in one case [20] said that administrative orders, *quasi*

judicial in character, are void, among other reasons, if the hearing granted was inadequate and manifestly unfair. The court in setting aside a recent order of the Interstate Commission because of its failure to grant the railroads a rehearing upon a showing of changed conditions, said [23] that in the discharge of the commission's duty a fair hearing is a fundamental requirement, and further, and I emphasize this language, the prospect that a hearing may be long does not justify its denial if it is required by the essential demands of justice.

WHAT the Supreme Court has recently said in immigration cases is helpful.[24] Mr. Justice Stone, summarizing the principles that the courts have announced,[25] said that the action of the Secretary of Labor in an immigration case is subject to some judicial review, that the courts may determine whether his action is within his statutory authority, whether there was any evidence before him to support his determination, and whether such procedure which he adopted in making it satisfies elementary standards of fairness and reasonableness, essential to the due administration of the summary proceeding which Congress had authorized, that the power conferred on the secretary is a great power but must be exercised fairly, to the end that he may consider all evidence relevant to the determination which he is required to make, that he may arrive justly at his conclusion and preserve such record of his action that it may be known that he has performed the duty which the law commands.

I have referred to these decisions because they direct attention to an indispensable factor in the determination of any controversy, namely, the fair exercise under the facts in a particular case of the powers conferred. Upon the question involved and the facts must depend in any case whether the power has been fairly exercised and the demands of due process satisfied.

ANOTHER test of the kind of hearing that is required in a case involving rates, whether permanent or temporary, is suggested by Mr. Justice Cardozo in a recent opinion [26] in which he said that a hearing before a commission fixing the rates of public service corporations and limiting their powers in the transaction of their business must be adapted to the consequences that are to follow, to the attack and the review to which their orders will be subject, and that the Interstate Commerce Act as it reads today, and kindred statutes in the states, are instinct with the recognition of a duty to give a hearing of such a kind that the courts will understand why a commission has acted as it has if their supervisory powers are afterwards invoked for enforcement or revision. The Supreme Court in many recent decisions has criticized both the Interstate Commission and the lower Federal courts for their failure to set forth the reasons for their action.[27] No reasons could, of course, be given in the absence of an adequate record.

It has recently been held [28] that an emergency order changing rates must be based upon evidence sufficient to justify such change, that the rate cannot be reduced to such an extent as to deprive the utility of a fair return, and that it cannot be increased so as to permit the utility to receive more than a reasonable return.

ANOTHER court in staying the enforcement of a temporary rate order said [29] that public utility rates, whether temporary or permanent, must be found by methods recognized by law.

It would seem, as a matter of principle, that a hearing for the purpose of enabling a commission to fix temporary rates must be of such a kind and character as will enable the commission to determine what would be a lawful rate, and that there must be such a development of the facts as will insure that the rates fixed are lawful rates under the tests and standards laid down by the courts. How far a commission must go into the facts depends of course upon the particular case. The hearing must not be a mere form.[29]

The question arises as to whether commissions, before entering temporary orders, are required to make a valuation. The courts in cases decided during the war period held that commissions had the power to approve increases in rates by amounts sufficient to meet the mounting cost of operation without a valuation of the utility's property.[30] The question would seem to depend not only upon the facts in the particular case but upon the statute.

It has been suggested that if emergency increases were fair at a time of mounting increases in the cost of operation, emergency reductions are fair under present conditions.[4, 31] But the temporary rate orders that have recently been entered appear to have been predicated not so much upon reductions in operating expenses due to decreases in the costs of labor and materials, as upon other considerations, including changes in the rate base, in the rate of return, and the economic necessities of consumers. If rates are proposed to be reduced because of a decrease in the value of the property, it would seem necessary for the commission to conduct a hearing respecting that value.

It is not without significance that the recent Acts of Illinois and Virginia,[3, 3a] make the right of the commission to establish temporary rates conditional upon a finding that the net income of the utility is in excess of the amount required for a reasonable return upon the value of the property. Another amendment as does the Virginia statute,[3a] provides that in a proceeding in which the value of any utility is in issue, the burden of establishing such value shall be upon the utility.[32] It would seem, in the light of the authorities, that it would be a denial of due process not to give a utility under such circumstances a reasonable and fair opportunity to meet the burden thus imposed upon it by the statute itself. And in two recent decisions of the Illinois commission fixing temporary rates [17] the commission, following an investigation, made a finding of fair value. These decisions would tend to show that it is possible to conduct hearings with more expedition than has commonly been assumed.

Another related question is whether a commission may treat as evidence facts that were not introduced as such and which were not a part of the record before it. If a commission could consider and weigh facts not introduced in evidence at the hearing, if it could be relieved of the requirement to decide cases in accordance with the facts proved, plainly a short cut could be found to the more expeditious disposition of controversies. But it is established that any such procedure would be arbitrary and would constitute a denial of due process.

It was argued by the government in the Supreme Court that in view of the language of the Interstate Commerce Act that rates should be set aside if after a hearing the "Commission was of the opinion that the rate charged is unreasonable," the order based on such opinion was conclusive and could not be set aside, even if the finding was wholly without substantial evidence.[20] But Mr. Justice Lamar in an illuminating decision said that the statute gave the right to a full hearing, that this conferred the privilege of introducing testimony and at the same time imposed the duty of deciding in accordance with the facts proved, that a finding without evidence was arbitrary, and that if the government's contention was correct it would mean that the Interstate Commission had a power possessed by no other officer or administrative body, that where rights depended upon facts, the commission could disregard all rules of evidence and could capriciously make findings by administrative fiat.

These principles have been announced in many other decisions of the Supreme Court. The court has said that provision for a hearing under the Interstate Commerce Act implies both the privilege of introducing evidence and the duty of deciding in accordance with it, that to refuse to con-

sider evidence introduced, or to make an essential finding without supporting evidence is arbitrary action,[33] that a carrier must have the right to secure and present evidence material to the issue under investigation, that it must be given the opportunity by proof and argument to controvert the claim asserted against it before a tribunal bound not only to listen but to give legal effect to what has been established.[34]

The Supreme Court recently set aside an order of the Interstate Commission on the ground that the commission improperly treated as evidence facts that were not introduced as such, and that the matter thus improperly treated may have been an important factor in the conclusions reached by the commission.[35]

The cases, both Federal and state, dealing with this particular point are reviewed at length in a recent study by Harold M. Stephens, entitled "Administrative Tribunals and the Rules of Evidence." [36]

Is an order fixing temporary rates, but continuing the investigation to determine what permanent rates should be established, such an order as will permit the utility to resort to the courts for relief, without waiting for the conclusion of the proceedings? The question can best be answered in the language of the Supreme Court that an order prescribing temporary rates to be effective until the final determination, is a final legislative act as to the period during which it should remain in effect, and that upon a showing that the reduced rates were confiscatory, the company was entitled to have their enforcement enjoined pending the completion of the rate-making process.[37] This case has been followed in the more recent decisions dealing with the validity of temporary orders fixing rates.[38]

The recent amendment of the Illinois Commerce Commission Law [3] provides in substance that if upon the final disposition of the case, the rates determined are in excess of the rates prescribed in the temporary order, the utility shall be permitted to recoup its loss during the interim by means of a temporary rate increase over and above the rates finally determined. The Virginia statute contains a similar provision.[3a] This provision for recoupment raises novel and interesting questions.

The Illinois commission in recently fixing temporary rates [39] said that the property of the utility will not be confiscated because of the provision for recoupment. It has also been said [31] that this provision for recoupment may protect emergency orders against judicial attack, inasmuch as such provision would tend to make abortive the allegations of irreparable injury.[40]

But would this be the result in a clear case of confiscation under a temporary rate order? Does this provision for recoupment immunize orders against judicial control?

Here again the answer would seem to be found in the decisions of the Supreme Court. That court has said that it cannot be doubted that in a clear case it is the right and duty of the court to annul the operation of a confiscatory law.[41] If, therefore, a clear case of confiscation would result from the establishment of the temporary rates, if, to use the language of Mr. Justice Brandeis,[42] the evidence compels the conviction that the rate would not prove adequate, it would seem that the courts would not "hesitate to arrest the operation" [41] of the temporary rate.

But I emphasize that this could be done only in those cases in which the utility made out a clear case of confiscation under the temporary rate. It has been suggested that the courts would favor temporary rate orders,[43] and reference has been made to holdings of the Supreme Court that there should be a practical test of the rates prescribed by public authority to determine whether they were confiscatory. But an examination of the cases relied upon [44] will show that they were what may be said to have been "border-line cases," that is, cases in which the utility failed to

sustain the burden cast upon it of showing beyond any just or fair doubt that the rates were confiscatory.[45]

There is, moreover, always the possibility that conditions may so change, including not only consumptive demand, but increases in the cost of labor, the prices of materials, and in operating costs generally, that recoupment as a practical matter may be impossible.

The Interstate Commerce Commission in 1920[46] approved increases in rates in the United States to enable carriers to meet increases in the costs of operation and to obtain a fair return on the value of their property. In not one year since 1921 have the railroads in the United States earned as much as 5¾ per cent on the value of their property, whether that value be based upon the property investment or the value found by the commission in 1920 adjusted and brought down to date.[47] To the same effect seems to be the experience of the British Railways.[48]

THE experience of the railroads is in many respects not comparable to that of other utilities in that the railroads have encountered in the last decade the competition of newer agencies of transportation. But their experience does tend to show that conditions arise that cannot be forecast, and that the attempted recoupment in the future of losses in the past, and the postponement to the future of the time when a utility may earn a fair return may result in confiscation.

And there is at least one case in the books from which it appears that a reduction in street car fares was made on the assumption that prices and operating costs would fall, a prophecy, to use the language of Mr. Justice Brandeis, if such there was, which proved false.[49]

If provisions for recoupment are to be applied, it would seem that they can be applied only in these border-line cases, cases in which the evidence does not compel a conviction that the rate would prove inadequate and confiscatory.

During the hearings before the Illinois legislature upon the proposed recoupment provision, it was urged that the fact that one group of consumers might obtain the benefit of a lower rate at the expense of another group who might be obligated to reimburse the utility, rendered such a provision arbitrary and unlawful.[50] Doubtless those advancing this view had in mind decisions of the Supreme Court that deficits in the past do not afford a legal basis for invalidating rates, otherwise compensatory.[51]

IT has been suggested on the other hand by the Interstate Commission[52] that inasmuch as railroad earnings must inevitably fall below normal in times of depression, they may properly be permitted to rise above normal in times of prosperity. It may well be, therefore, that the question whether in times of prosperity a utility should be permitted to charge rates something more than normal, or whether following an order fixing rates, which order did not seem to be clearly confiscatory at the time it was entered, the utility should be permitted to recoup its losses by a slight increase in the rates, but reflect after all the wide latitude that a utilities commission has in the fixation and establishment of rates. As stated by Mr. Chief Justice Hughes,[53] the rate-making power necessarily implies a range of legislative discretion, and it has seemed to me that the utilities, their counsel, and the commissions themselves, have all too frequently overlooked the range of this discretion and the well-established principle that a just and reasonable rate is not necessarily one that is just over the red line of confiscation.

The Supreme Court has said that the commission in its discretion may determine a just and reasonable rate that is substantially higher than one merely sufficient to escape condemnation in a confiscation case, that rates substantially higher than the line between validity and unconstitutionality properly may be deemed to be just and reasonable and not excessive.[54]

IN a recent book dealing with the regulation of public utilities [55] the author distinguishes between what he calls a constitutional rate and an economic rate. He says that not only the courts but the public, should ever recognize that the responsibility of providing, for the various utilities within the sphere of state action, rates that are economically and socially satisfactorily in excess of the constitutional deadline of fairness, is one that belongs properly to the individual states, varying, as they do, in their specialized local needs. He well points out that regardless of what is the answer of the courts to the question: "What is a constitutional rate?" regulatory bodies cannot avoid the responsibility for fixing fair and reasonable rates within the range of the discretion left them by the courts.

So much has been said and written respecting the judicial review of decisions of administrative bodies that it has frequently seemed that no case was ever tried out before an administrative body that was not appealed, and the result has been, as pointed out in the work just referred to, that the emphasis has been shifted from the fundamental: "What is an economic rate?" to "What is a constitutional rate?" [56]

IT has been said [57] that since the Federal courts, when they go into questions of value, attempt to find the lowest reasonable measure of return, it is clear that if the commission adopt as its basic valuation for setting rates the same measure which the courts use in testing an unreasonably low return, the commission is constantly on the border line of confiscation and involving itself in constant attacks upon its findings. The author further says that this may, in part, account for the fact that the Federal courts have reversed the commissions in over 87 per cent of cases involving the factor of value.[58]

All this but illustrates the further point, to use the language of the Interstate Commission,[59] that the words "just and reasonable" are not fixed, unalterable, mathematical terms, that they imply the application of good judgment and fairness, of good sense, and a sense of justice to the facts of record. The Supreme Court has recognized that there must exist a range for the flexible limit of judgment which belongs to the power to fix rates.[60] There would be no flexible limit of judgment if all rates were measured by their relation to cost or by a predetermined rule or some mathematical formula.

PERHAPS there is needed what the Assistant Secretary of Commerce, a man whose work on administrative law has almost become a classic,[61] describes as economic statemanship, a need that extends not only to a selected group, but to all who have any duties or responsibilities in connection with the ownership, management, or regulation of public utilities.

We should bear in mind what Mr. Justice Holmes once said: [62]

> . . . An adjustment of this sort under a power to regulate rates has to steer between Scylla and Charybdis. On the one side, if the franchise is taken to mean that the most profitable return that could be got, free from competition, is protected by the Fourteenth Amendment, then the power to regulate is null. On the other hand, if the power to regulate withdraws the protection of the Amendment altogether, then the property is naught. This is not a matter of economic theory, but of fair interpretation of a bargain. Neither extreme can have been meant. A midway between them must be hit.

The assertion that due process of law controls the action of an administrative body in fixing rates does not mean that there is not room for improvement in methods of procedure before utility commissions and in the handling before commissions of the complicated and technical questions that present themselves. There can be little doubt but that there exists an opportunity for real constructive work, work requiring earnest coöperation not only on the part of the commissions but utility managements and those who represent utilities, in formulating rules of procedure and methods of handling cases that will avoid the claim that the trial of cases

before the commissions is accompanied by unnecessary and unreasonable delay. Nor does it mean that the management, regulation, and control of utilities may not take other forms and shapes. Attention is now being called to the operation of public utility trusts and mixed trusts in England and to the advantage which it is claimed these trusts possess over a system of private management and government control.[63]

It is submitted, however, that all this can be done and ought to be done within the framework of the law and within the concept of due process as that concept has been announced and developed by the courts. It is clear that the recent decisions dealing with the validity of temporary or emergency rate orders but again emphasize that short cuts to reductions in rates are not short cuts when they fail to satisfy the demands of due process.[38] There is, it seems to me, a responsibility on all of us for the adoption of such a procedure as will make regulation effective and as will make it at the same time fair, but all within the framework of the law.

Utilities are today confronted with rising costs of operation and it seems not improbable that conditions may justify and indeed require increases in utility rates and not reductions. There may be emergency rate orders but of a different kind from those that had been expected. The railroads of the United States are this week filing with the Interstate Commission a petition in which they seek authority to increase their rates by such amounts as will enable them to meet in part the rising costs of operation due to increases in the wage level and in the prices of materials and supplies. It is estimated that these increases, on the basis of operations for the year 1934, will increase their operating expenses by approximately $293,000,000.

It is not without significance that the recent act of Virginia [38a] specifically provides for emergency increases in rates as well as for emergency reductions, the utility being required to give a bond pending the establishment of permanent rates.

A court in a confiscation case [64] very recently pointed out that there would seem to be no just criticism from the standpoint of public policy in maintaining wage rates of public utilities even at a time of declining prices, that it is the announced policy of government that wages should be maintained as far as possible despite the depression.

Due process is really the rule of reason, the rule of fairness, assurance against uncontrolled and unrestrained power. No one could charge Harold J. Laski, the well-known writer on political science and government, with being a conservative. Yet it is significant that while recognizing that expert commissions are necessary in our complicated world, Mr. Laski says that what is essential is that we should have the assurance that the methods utilized by an administrative body in reaching its decision are judicially satisfactory, that, for instance, there is full time for the preparation of the case, that the administrative body has been compelled to take account of all the relevant evidence, and that the court on examining the record can satisfy itself that the parties have had a full and fair hearing.[65]

The language of Mr. Justice Roberts, though found in a dissent,[66] is such a notable statement of the principles of due process that it may well conclude this paper:

> The concept of due process is not technical. Form is disregarded if substantial rights are preserved. In whatsoever proceeding, whether it affect property or liberty or life, the Fourteenth Amendment commands the observance of that standard of common fairness, the failure to observe which would offend men's sense of the decencies and proprieties of civilized life. It is fundamental that there can be no due process without reasonable notice and a fair hearing. Though the usual and customary forms of procedure be disregarded, the hearing may nevertheless be fair, if it safeguards the defendant's substantial rights.

Citations

[1] Report of Standing Committee to Survey and Report as to Developments during the Year in the Field of Public Utility Law. Phleger, *Quo Vadis*, Vol. 58, Reports of American Bar Asso., p. 660.

[2] Chap. 287, Laws of New York, 1933.

[3] Act of State of Illinois, approved July 8, 1933, amending § 36 of the Illinois Commerce Commission Law, Callaghan's Illinois Statutes Annotated, 1933 Supp., Chap. 111-A, § 51.

[3a] Chap. 246, Virginia Laws, 1934.

[4] Weidel, *Recent Amendments to Illinois Public Utilities Act*, Ill. Law Rev., May, 1934, Vol. 29, p. 84; Prendergast, *The Crisis Confronting the Commissions*, Vol. XII, PUBLIC UTILITIES FORTNIGHTLY, p. 303 (Sept. 14, 1933); *Federal and State Attitudes Towards Public Utilities*, Vol. XIII, PUBLIC UTILITIES FORTNIGHTLY, p. 283 (Mar. 1, 1934); *Is "Temporary Rate Fixing" Really A Short Cut?* Vol. XIII, PUBLIC UTILITIES FORTNIGHTLY, p. 673 (May 24, 1934); Swidler, *Temporary Rates*, Vol. XII, PUBLIC UTILITIES FORTNIGHTLY, pp. 136 and 202 (Aug. 3, 1933, and Aug. 17, 1933); Bauer, *The Need For Quick-fire Regulatory Commissions*, Vol. XII, PUBLIC UTILITIES FORTNIGHTLY, p. 695 (Dec. 7, 1933); Radio Appeal of Governor H. H. Lehmann of New York for the Passage of Certain Public Utilities Bills, *New York Times*, Tuesday, Mar. 27, 1934.

[5] Lilienthal, *Public Utilities During the Depression*, Vol. 46, Harv. Law Rev. p. 745.

[6] Bauer, *The Need for Quick-fire Regulatory Commissions*, Vol. XII, PUBLIC UTILITIES FORTNIGHTLY, p. 695 (Dec. 7, 1933).

[7] Radio Appeal of Governor H. H. Lehmann of New York for the Passage of Certain Public Utilities Bills, *New York Times*, Tuesday, Mar. 7, 1934.

[8] See in this connection the article entitled, *Is "Temporary Rate Fixing" Really a Short Cut?* Vol. XIII, PUBLIC UTILITIES FORTNIGHTLY, p. 673 (May 24, 1934).

See also Nichols, *High Cost to the Public of Buncombe Utility Rate Laws*, Vol. XIII, PUBLIC UTILITIES FORTNIGHTLY, p. 559 (May 10, 1934).

[9] Brinkerhoff-Faris Trust & Sav. Co. *v.* Hill (1930) 281 U. S. 673, 678, 74 L. ed. 1107.

[10] Burdeau *v.* McDowell (1921) 256 U. S. 465, 477, 65 L. ed. 1048.

[11] United States *v.* Illinois C. R. Co. (1934) 291 U. S. 457, 78 L. ed. 909. This decision is the subject of a recent note in 43 Yale Law Journal, p. 1300, entitled, *Necessity for Hearing before Enforcing Order of Inter. Com. Comm.*

[12] *Re* American Barge Line Co. (1932) 190 Inters. Com. Rep. 177.

[13] Section 3 (e) of Inland Waterways Corporation Act of June 3, 1924, Chap. 243, 43 Stat. 360, as amended, Chap. 891, § 2, 45 Stat. 978.

[14] Procedure Under Barge Line Act (1928) 148 Inters. Com. Rep. 129; Through Routes and Joint Rates (1931) 172 Inters. Com. Rep. 525, 528; *Re* Mississippi Valley Barge Line Co. (1931) 178 Inters. Com. Rep. 224, 226; *Re* American Barge Line Co. (1932) 190 Inters. Com. Rep. 177, 179.

[15] Illinois C. R. Co. *v.* United States (1933) 3 F. Supp. 1005.

[16] Southern R. Co. *v.* Com. ex rel. Shirley (1933) 290 U. S. 190, 4 P.U.R.(N.S.) 293. The court cited its previous decisions to the effect that a hearing is necessary before commissions may lawfully fix freight rates; Interstate Commerce Commission *v.* Louisville & N. R. Co. (1913) 227 U. S. 88, 91, 57 L. ed. 431; Chicago, M. & St. P. R. Co. *v.* Minnesota ex rel. R. & Warehouse Commission, 134 U. S. 418, 457, 33 L. ed. 970. The supreme court of Montana recently set aside an order of the Montana Board of Railroad Commissioners (Chicago, M. & St. P. R. Co. *v.* Railroad Comrs. 76 Mont. 305, P.U.R. 1926E, 415), entered without a hearing, requiring the construction of a spur track. The statute under which the board acted did not provide for a hearing.

[17] Booth and Rooks, Attorneys, Illinois Commerce Commission, *Current Problems of Public Rate Regulation*, Annual Meeting of Association of American Law Schools, Chicago, Dec. 29, 1933; Commerce Commission *v.* Public Service Co. (Ill. 1934) 4 P.U.R.(N.S.) 1; *Re* Western United Gas & E. Co. Docket No. 22357, Opinion and Order of July 9, 1934.

[18] Tri-State Teleph. & Teleg. Co. *v.* Benson (U. S. Dist. Ct. 1932) P.U.R.1933A, 38.

[19] Indiana General Service Co. *v.* McCardle, 1 F. Supp. 113, P.U.R.1932D, 378.

[20] Interstate Commerce Commission *v.* Louisville & N. R. Co. (1913) 227 U. S. 88, 91, 57 L. ed. 431.

[21] Interstate Commerce Commission *v.* Union P. R. Co. (1912) 222 U. S. 541, 547, 56 L. ed. 308; Manufacturers' R. Co. *v.* United States (1918) 246 U. S. 457, 481, 62 L. ed. 831; Oregon R. & Nav. Co. v. Fairchild (1912) 224 U. S. 510, 536, 56 L. ed. 863; People ex rel. New York & Q. Gas Co. *v.* McCall (1917) 245 U. S. 345, 348, P.U.R. 1918A, 792; Louisville & N. R. Co. *v.* Finn, 235 U. S. 601, 606, P.U.R.1915A, 121. See also editorial note on *The Right to a Hearing before Administrative Tribunals*, 28 Harv. Law Rev. p. 198; Pillsbury, *Administrative Tribunals*, 36 Harv. Law Rev. 583, p. 587; Laski, *Liberty in the Modern State*, pp. 38, 41; Laski, *A Grammar of Politics*, pp. 393, 394. See also the notes on *Due Process Requirement and Notice of Hearing in Administrative Proceedings*, 34 Columbia Law Rev. p. 332; *Necessity for Hearing before Enforc-*

ing Orders of Interstate Commerce Commission, 43 Yale Law Jour. p. 1300.

[22] Wichita R. & Light Co. *v.* Kansas Pub. Utilities Commission (1922) 260 U. S. 48, 59, P.U.R.1923B, 300; Hampton & Co. *v.* United States (1928) 276 U. S. 394, 407, 72 L. ed. 624; Southern R. Co. *v.* Com. ex. rel. Shirley (1933) 290 U. S. 190, 4 P.U.R.(N.S.) 293.

[23] The Western Grain Rate Case: Atchison, T. & S. F. R. Co. *v.* United States (1932) 284 U. S. 248, 262, 76 L. ed. 273. The Supreme Court in United States v. Illinois C. R. Co. (1934) 291 U. S. 457, 78 L. ed. 909, used the expression "opportunity . . . for a full and fair hearing."

[24] Chin Yow *v.* United States (1908) 208 U. S. 8, 52 L. ed. 369; Kwock Jan Fat *v.* White (1920) 253 U. S. 454, 64 L. ed. 1010. The decisions on this question are reviewed in VanVleck, *Administrative Control of Aliens*, The Commonwealth Fund, 1932.

[25] Lloyd Sabaudo Societa Anonima *v.* Elting (1932) 287 U. S. 329, 77 L. ed. 341.

[26] Norwegian Nitrogen Products Co. *v.* United States (1933) 288 U. S. 294, 319, 77 L. ed. 796.

[27] Beaumont, S. L. & W. R. Co. *v.* United States (1930) 282 U. S. 74, 86, 75 L. ed. 221; Florida *v.* United States (1931) 282 U. S. 194, 215, 75 L. ed. 291; Wichita R. & Light Co. *v.* Kansas Pub. Utilities Commission (1922) 260 U. S. 48, 58, P.U.R.1923B, 300; Virginian R. Co. *v.* United States (1926) 272 U. S. 658, 675, 71 L. ed. 463; Lawrence *v.* St. Louis-S. F. R. Co. 274 U. S. 588, 591, P.U.R.1927D, 781; Arkansas R. Commission *v.* Chicago, R. I. & P. R. Co. (1927) 274 U. S. 597, 603, 71 L. ed. 1224; Hammond *v.* Schappi Bus Line (1927) 275 U. S. 164, 171, P.U.R.1928A, 388; Cleveland, C. C. & St. L. R. Co. *v.* United States (1928) 275 U. S. 404, 414, 72 L. ed. 338; Baltimore & O. R. Co. *v.* United States (1929) 279 U. S. 781, 787, 73 L. ed. 954; Wisconsin Pub. Service Commission *v.* Wisconsin Teleph. Co. 289 U. S. 67, P.U.R.1933C, 264. The Illinois Supreme Court has repeatedly held that the findings of the Illinois commission must be specific enough to enable the court to review intelligently the decision of the commission, that reviewing courts will examine the facts on which an order is based, and if the facts found afford a reasonable basis for the order it will be sustained, Atchison, T. & S. F. R. Co. *v.* Commerce Commission ex rel. Illinois Coal Traffic Bureau (1929) 335 Ill. 624; Chicago *v.* Commerce Commission ex rel. Chicago & W. I. R. Co. (1934) 356 Ill. 501, Cf. Trustees of Saratoga Springs *v.* Saratoga Gas, E. L. & Power Co. (1908) 191 N. Y. 123.

[28] New York Edison Co. *v.* Maltbie (1934) 150 Misc. 200, 1 P.U.R.(N.S.) 481. See also Rockland Light & P. Co. *v.* Maltbie (1934) 241 App. Div. 122, 4 P.U.R.(N.S.) 113, annulling an order of the public service commission of New York.

[29] Washington ex rel. Oregon R. & Nav. Co. *v.* Fairchild (1912) 224 U. S. 510, 56 L. ed. 863.

[30] O'Brien *v.* Public Utility Comrs. 92 N. J. L. 587, P.U.R.1919D, 774; Oklahoma Gas & E. Co. *v.* State Corp. Commission (1921) 83 Okla. 281, P.U.R.1922A, 336; La Crosse *v.* Railroad Commission (1920) 172 Wis. 233, P.U.R.1921A, 22; Chicago R. Co. *v.* Chicago (1920) 292 Ill. 190, P.U.R.1921A, 77; Omaha & C. B. Street R. Co. *v.* State R. Commission, 103 Neb. 695, P.U.R.1919F, 307; Charleston *v.* Public Service Commission, 83 W. Va. 718, P.U.R.1919D, 792; Kansas City *v.* Public Service Commission (1918) 276 Mo. 539, P.U.R.1919D, 422.

[31] Swidler, *Temporary Rates*, Vol. XII, PUBLIC UTILITIES FORTNIGHTLY, p. 136 and 202, (Aug. 3 and 17, 1933).

[32] Act of State of Illinois, approved July 8, 1933, amending § 30 of the Illinois Commerce Commission Law, Callaghan's Illinois Statutes Annotated, 1933 Supp. Chap 111–A, § 46.

[33] The Chicago Junction Case (1924) 264 U. S. 258, 265, 68 L. ed. 667; United States *v.* Baltimore & O. S. W. R. Co. (1912) 226 U. S. 14, 20, 57 L. ed. 104.

[34] Washington *ex rel.* Oregon R. & Nav. Co. *v.* Fairchild, *supra*. See also Interstate Commerce Commission *v.* Louisville & N. R. Co. (1913) 227 U. S. 88, 93, 57 L. ed. 431.

[35] United States *v.* Abilene & S. R. Co. (1924) 265 U. S. 274, 68 L. ed. 1016.

[36] It is well stated by Mr. Stephens that it is somewhat difficult to draw a line between either the taking of a view by commissioners for the purpose of better understanding evidence, or the expert opinion and capacity of commissioners which also enables them the better to understand and decide, on the one hand, and on the other the actual gathering of information by commissioners and the decision of causes thereon without submitting such information to the record and the parties. The author goes on to say, however, that if by a hearing is meant, as outside the field of oriental justice it is thought to mean the right to know and to be heard concerning the evidence relied upon, and the right to argue to the very mind which is to act upon that evidence, such a line must be drawn, and can be drawn by the commissions as it has been drawn by the courts.

[37] Prendergast *v.* New York Teleph. Co. 262 U. S. 43, 49, P.U.R.1923C, 719. Cases in which the same principle was applied: Love *v.* Atchison, T. & S. F. R. Co. (1911) 107 C. C. A. 403, 185 Fed. 321, 327; Toledo *v.* Toledo R. & Light Co. (1919) 259 Fed. 450, 459; Cumberland Teleph. & Teleg. Co. *v.* Tennessee R. & Pub. Utilities Commission (1921) 287 Fed. 406, 416; Oklahoma Operating Co. *v.* Love (1920) 252 U. S. 331, 337, 64 L. ed. 596; Landon *v.* Public Utilities Com-

mission (1917) 242 Fed. 658, 667, P.U.R. 1918A, 31.

[38] Indiana General Service Co. *v.* McCardle, 1 F. Supp. 113, P.U.R.1932D, 378; Tri-State Teleph. & Teleg. Co. *v.* Benson (U. S. Dist. Ct. 1932) P.U.R.1933A, 38, 41; New York Edison Co. *v.* Maltbie (1934) 150 Misc. 200, 1 P.U.R.(N.S.) 481; Wisconsin Pub. Service Commission *v.* Wisconsin Teleph. Co. 289 U. S. 67, P.U.R.1933C, 264, appeal from order of Wisconsin Railroad Commission fixing temporary rates; Re Wisconsin Teleph. Co. P.U.R.1932D, 173; Rockland Light & P. Co. *v.* Maltbie, 148 Misc. 22, P.U.R.1933E, 113; (1934) 241 App. Div. 122, 4 P.U.R.(N.S.) 113.

[39] Commerce Commission *v.* Public Service Co. (1934) 4 P.U.R.(N.S.) 1.

[40] In a paper entitled *Current Problems of Public Rate Regulation,* by Ervin Rooks and Harry R. Booth, attorneys for the Illinois Commerce Commission, read at the annual meeting of the Association of American Law Schools, Chicago, Dec. 29, 1933, the statement is made that § 36 of the Illinois Commerce Commission Law, as amended by Act of July 8, 1933, containing this provision for recoupment, was carefully designed to provide for emergency orders that shall be sustained by the courts.

[41] Knoxville *v.* Knoxville Water Co. (1909) 212 U. S. 1, 17, 53 L. ed. 371.

[42] Missouri *ex rel.* Southwestern Bell Teleph. Co. *v.* Public Service Commission, 262 U. S. 276, 296, P.U.R.1923C, 193.

[43] *Re* Wisconsin Teleph. Co. (Wis.) P.U.R. 1932D, 173, 283, citing cases "as to the wisdom of a test period."

[44] San Diego Land & Town Co. *v.* National City (1899) 174 U. S. 739, 754, 43 L. ed. 1154; San Diego Land & Town Co. *v.* Jasper (1903) 189 U. S. 439, 442, 47 L. ed. 892; Knoxville *v.* Knoxville Water Co. *supra;* Willcox *v.* Consolidated Gas Co. (1909) 212 U. S. 19, 41, 54, 53 L. ed. 382; Van Dyke *v.* Geary (1917) 244 U. S. 39, 44, 61 L. ed. 973; Galveston Electric Co. *v.* Galveston, 258 U. S. 388, 401, P.U.R.1922D, 159; Des Moines Gas Co. *v.* Des Moines, 238 U. S. 153, 173, P.U.R.1915D, 577; Lincoln Gas & E. L. Co. *v.* Lincoln (1919) 250 U. S. 256, 262, 63 L. ed. 968; Darnell *v.* Edwards, 244 U. S. 564, 570, P.U.R.1917F, 64.

[45] Oklahoma Operating Co. *v.* Love (1920) 252 U. S. 331, 337, 64 L. ed. 596. Mr. Justice Brandeis in holding in this comparatively recent case that a suit should proceed for the purpose of determining whether the maximum rates fixed by the Commission were under the then-existing conditions confiscatory, said that it did not follow that the Commission need be restrained from proceeding with an investigation of plaintiff's rates and practices, so long as its findings were subjected to the review of the District Court.

[46] Ex Parte 74, *Increased Rates* (1920) 58 Inters. Com. Rep. 220.

[47] *General Rate Level Investigation* (1933) 195 Inters. Com. Rep. 5, 51.

[48] Dimock, *Public Utilities in Great Britain,* Univ. of Chicago Press, 1934.

[49] Galveston Electric Co. *v.* Galveston, *supra.*

[50] See Note 17. Also, Weidel, *Recent Amendments to Illinois Public Utilities Act,* Ill. Law Rev. May, 1934, Vol. 29, p. 84.

[51] Galveston Electric Co. *v.* Galveston, *supra;* Knoxville *v.* Knoxville Water Co. *supra;* Los Angeles Gas & E. Corp. v. California R. Commission, 289 U. S. 287, 313, P.U.R.1933C, 229.

[52] *Fifteen Per Cent Case* (1931) 178 Inters. Com. Rep. 539, 582.

[53] Louisville & N. R. Co. *v.* Garrett (1913) 231 U. S. 298, 313, 58 L. ed. 229.

[54] Banton *v.* Belt Line R. Corp. (1925) 268 U. S. 413, 422, P.U.R.1926A, 317, citing Trier *v.* Chicago, St. P., M. & O. R. Co. (1914) 30 Inters. Com. Rep. 352, 355; Holmes & Hallowell Co. *v.* Great Northern R. Co. (1915) 37 Inters. Com. Rep. 627; Dimmitt-Caudle-Smith Live Stock Commission Co. *v.* Chicago, B. & Q. R. Co. (1917) 47 Inters. Com. Rep. 287, 298; Detroit & M. R. Co. *v.* Michigan R. Commission (1913) 203 Fed. 864, 870. See also Northern Illinois Light & Traction Co. *v.* Commerce Commission ex rel. Ottawa, 302 Ill. 11, 24, P.U.R. 1922E, 690; Idaho Power Co. *v.* Thompson, 19 F. (2d) 547, P.U.R.1927D, 388, and Mr. Justice Butler's statement in his dissent in Los Angeles Gas & E. Corp. *v.* California R. Commission, 289 U. S. 287, 326, P.U.R.1933C, 229, that the commission's field of action is within reasonable limits above the point or line where confiscation would commence. Mr. Justice Brandeis gave expression to the same principle in his concurring opinion in Missouri ex rel. Southwestern Bell Teleph. Co. *v.* Public Service Commission, 262 U. S. 276, 296, P.U.R.1923C, 193, 206, when, after referring to the fact that the commissions undertook to make the rule announced in Smyth *v.* Ames (1898) 169 U. S. 466, 42 L. ed. 819, their standard for constructive action and to use it as a guide in making or approving rates, said:

> . . . And the tendency developed to fix as reasonable, the rate which is not so low as to be confiscatory. (This, it appears, was the purpose of the Board in Galveston Electric Co. *v.* Galveston, 258 U. S. 388, P.U.R.1922D, 159.) Thus the rule which assumes that rates of utilities will ordinarily be higher than the minimum required by the Constitution has, by the practice of the commissions, eliminated the margin between a reasonable rate and a merely compensatory rate; and, in the process of rate making, effective judicial review is very often rendered impossible.

See also the quotation of Mr. Chief Justice Hughes in Los Angeles Gas & E. Corp. *v.* California R. Commission, *supra,* from Bluefield Water Works & Improv. Co. *v.* West Virginia Pub. Service Commission, 262 U. S. 679, 692, P.U.R.1923D, 11, to the effect that

the return "should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." The Chief Justice also had occasion to point out in his decision in this case (p. 314):

> . . . It is necessary again, in this relation, to distinguish between the legislative and judicial functions. It is the appropriate task of the commission to determine the value of the property affected by the rates it fixes, as that of an integrated, operating enterprise, and it is the function of the court in deciding whether rates are confiscatory not to lay down a formula, much less to prescribe an arbitrary allowance, but to examine the result of the legislative action in order to determine whether its total effect is to deny to the owner of the property a fair return for its use. (P.U.R.1933C, at p. 246.)

[55] Clay, *Regulation of Public Utilities.*

[56] This distinction between a nonconfiscatory rate and a just and reasonable rate is considered at length in Merrill, 14 Cornell Law Quarterly, p. 447.

[57] Beutel, *Valuation as a Requirement of Due Process of Law in Rate Cases,* 43 Harv. Law Rev. p. 1249.

[58] Beutel, *Due Process in Valuation of Local Facilities* (1929) 13 Minn. Law Rev. p. 409.

[59] *Re* Advances in Rates on Coal by Chesapeake & Ohio R. Co. (1912) 22 Inters. Com. Rep. 604.

[60] Atlantic Coast Line R. Co. *v.* North Carolina Corp. Commission (1907) 206 U. S. 1, 26, 51 L. ed. 933.

[61] See address of John Dickinson, Asst. Secretary of Commerce, made before the New Jersey Bar Asso., United States Law Rev. July 31, 1934.

[62] Cedar Rapids Gas Light Co. *v.* Cedar Rapids (1912) 223 U. S. 655, 669, 56 L. ed. 594.

[63] Dimock, *Public Utilities in Great Britain,* Univ. of Chicago Press, 1934; Dimock, *British and American Utilities,* 1 Univ. of Chicago Law Rev. p. 265; *The London Passenger Transport Act, 1933: A New Socialization, The Quarterly Journal of Economics,* Nov. 1933, p. 181.

[64] Chesapeake & P. Teleph. Co. *v.* West (1934) 7 F. Supp. 214, 3 P.U.R.(N.S.) 241.

[65] Laski, *Liberty in the Modern State,* pp. 38, 41; *A Grammar of Politics,* pp. 393, 394.

[66] Snyder *v.* Massachusetts (1934) 291 U. S. 97, 127, 78 L. ed. 674.

Government Planning for Interstate Transportation

By KARL KNOX GARTNER*

THE plan which for lack of a more descriptive title has been referred to as "Government Planning for Interstate Transportation" pretends to be nothing more than a foundation of principles on which only a framework is erected. The final appearance of the structure will depend upon the constructive consideration which it is hoped the matter will receive at the hands of all who are interested in good government.

Government planning is designed to provide a governmental form by which a planned economy for interstate transportation can be most efficiently administered.

Instead of a commission of eleven performing both administrative and judicial duties there will be a transportation administrator to perform the administrative duties and a rate tribunal to perform the judicial duties.

Instead of the long drawn out, expensive, formal procedure under the commission form, the transportation administrator will function quickly in the determination of administrative policy largely through the conference method. And the procedure before the rate tribunal will be so designed and limited that all decisions must be rendered within a maximum of nine months from the filing of the complaint.

INSTEAD of the administrator being the judge of any private rights of the patrons of the carriers which may have been violated by any administrative rule, as under a commission form,

*Member of the Bar of the District of Columbia; specialist in transportation and related matters.

all private rights of patrons will be adjudicated by a separate rate tribunal in no wise responsible for the administrative rule.

Instead of relatively short terms of office and eligibility for reappointment with resulting responsiveness of the office holder to political considerations, as under the commission form, there will be a term of fifteen years and ineligibility for reappointment for transportation administrator and members of the rate tribunal.

Instead of the relatively inadequate salaries under the commission form, there will be salaries paid the administrator and members of the rate tribunal, commensurate with those paid in the industry, with a limitation that no employee of any carrier subject to regulation shall receive compensation in excess of that paid the administrator.

Instead of the expenses of this governmental assistance to the industry in bringing about stabilization, coördination and rehabilitation being paid from taxation, it shall be borne by the industry under unit assessment proportionately levied.

Instead of groping around aimlessly in the formulation of an economy, the plan contemplates a progressive development predicated upon research in both economics and operations carried on by a bureau of research under the transportation administrator.

INSTEAD of abandoning the employees and employers in the transportation industry to their own resources in the settlement of any differences, government planning will anticipate the occasion for most of their differences by promulgating the fundamental principles that shall control their relations and providing the machinery for obtaining conformity to the principles announced by providing that all interstate transportation operations, whether by public or private carriers, must be unionized into unions that will be organized under governmental supervision through a bureau of labor relations under the transportation administrator to insure the protection of the rights of the employer as well as the individual employee, and by providing that all wages paid shall be sufficient to sustain the employee in accordance with the standard of living of those similarly employed in the particular place of employment, and by setting up within the bureau of labor relations the machinery for administering through the union organizations, systems of unemployment insurance, old-age pensions, *et cetera,* and by providing for a system of complaints that may be filed by an individual employee or employer with adjudication thereof under a board to be set up within the bureau of labor relations and by providing that no wage agreement will be legal unless participated in by the transportation administrator through a representative representing the public interest.

INSTEAD of managerial responsibility and private initiative over rates being paralyzed under provisions of law which have brought about a frozen rate structure that cannot be departed from wherever a rate order has been made, except with the express sanction of the commission, all rate orders of the administrator and rate tribunal will be subject to a limitation of two years and rates changed upon carrier initiative will not be subject to suspension.

Instead of the various forms of transportation being permitted to carry on a ruthless competition that is undermining the whole industry, their operations will be coördinated into a great national transportation machine that will not only facilitate peace-time commerce but will supply that necessary transportation which in time of war is a most vital part of our national defense. The transportation administrator will be made a member of the council of national defense.

Instead of the government making huge annual expenditures for highways, waterways, and power development projects without apparent regard to any national economy, these expenditures will hereafter be coördinated

through the transportation administrator with a view partly at least to their relation to the development of the national transportation machine as a part of the national defense.

INSTEAD of continuing many wasteful transportation practices, the operations of all agencies of transportation will be coördinated through pooling or rerouting, as well as by rate differential arrangements, as effectively as if all means of transportation were government owned.

Instead of railroads being regulated by an Interstate Commerce Commission; boat lines partly regulated by that commission, partly regulated by the Shipping Board, and partly regulated by Code Authority; pipe lines partly regulated by the Interstate Commerce Commission and partly regulated by Code Authority; trucks and busses regulated by Code Authority; air lines partly regulated by the commission, the Department of Commerce, and partly by Code Authority; all agencies of interstate transportation would be under a single governmental authority composed of a transportation administrator and a rate tribunal.

Instead of holding out to a regulated part of the industry an unfulfilled promise of adequate compensation which is rendered impossible of realization because of competition left unregulated and deliberately subsidized, a self-sustaining revenue will be assured to compensate a fair carrier value from which the public's share of unearned increment and capitalized earnings has been properly deducted.

INSTEAD of a rate level inflated to include a factor calculated to produce an excess return that is supposed to be required to attract the necessary amount of private capital to meet refunding and extension requirements, the government, through a bureau under the transportation administrator functioning in lieu of the Reconstruction Finance Corporation will underwrite all meritorious refunding operations or extension projects, in turn passing the loans on to the public for investment as it is doing in connection with the Home Loan and Farm Loan agencies.

Instead of undertaking to recapture any excess earnings, government shall require the excess over 6 per cent to be used in refunding of capital structure if found excessive or in building up cash reserves until adequate reserves are accumulated out of which dividends as well as interest on funded debt can be paid in lean years.

Instead of permitting railroad management to speculate in railroad or other securities with surplus funds through holding companies, prohibit such holding companies and all other devices that might defeat the building up of inherent financial stability of the industry as affording an opportunity for prime as distinguished from speculative investment.

Instead of government being content to function in the matter somewhat as a policeman through curbs, it will discharge its larger responsibility by functioning more as a partner, in the rôle of a directing coördinator.

THIS sketchy recital of some of the objectives of a planned economy for transportation demonstrates the expansiveness of the subject and the hopelessness of considering details of the plan in the compass of an address. Such details must be left for the personal investigation of those sufficiently interested.

The competitive situation in the industry that demands a planned economy rather than merely a system of curbs; whether a planned economy is to be preferred to government ownership; whether government planning is preferable to the commission or board form; whether a planned economy for interstate transportation is constitutional; are matters, however, that can and must be given brief consideration.

THE course of transportation regulation in this country has always

followed close upon the slowly changing competitive situation prevailing in the industry. Government planning or a planned economy for interstate transportation is not revolutionary. On the contrary, it is the next logical step in the progressive process of government regulation demanded by the critical competitive conditions existing in the transportation industry. In response to the demands of this competitive situation, government regulation heretofore has been deemed sufficient which has taken the form chiefly of curbs upon our railroads. These regulations have placed government, with respect to the industry, in the attitude of a policeman.

With the advent of the internal combustion motor into the transportation field and the resulting development of our highways and airways, supplemented by the rapid expansion of pipe lines and power lines, there has been in slow process a change in the competitive situation which has about reached a critical stage. These changes have introduced factors into the situation which cannot be resolved by government curbs alone. The policeman is no longer the sufficient governmental agent in this matter that he once was. The present competitive situation demands something more from government than curbs. Government must constructively coöperate as well as curb by functioning in the situation as a directing partner of the industry rather than simply as a policeman.

A planned economy that will fix the relationship and responsibilities of government as a directing partner in all forms of interstate transportation in their relation to one another, becomes nothing more than a transition from policeman to partner that is a normal progressive evolution in governmental responsibility rather than anything revolutionary.

LEST there be any who doubt the need for this directing coördination, let us briefly examine the situation existing in the industry: whereas at the turn of the century the railroads enjoyed a monopoly in interstate transportation, today we have aggressive water carriers that are continually expanding their services over waterways that are themselves being constantly extended at huge government expense; we have a system of highways that has been built largely with Federal funds that extends or is projected to every town and hamlet in the nation, paralleling almost every mile of railroad in the country, both main and branch line, on which private and public motor vehicles in constantly increasing numbers are operating, performing transportation that would otherwise have had to be performed by railroad; we have airways connecting every city of industrial or commercial importance in the nation making hourly flights that are taking business away from the railroads; we have pipe lines transporting gas and power lines transmitting electricity which are displacing the coal that formerly moved by railroad from mine to city to be manufactured into electricity or gas; we have gasoline pipe lines transporting large volumes of refined petroleum products that formerly had to move by rail; we have tank steamers and tank barges that move quantities of petroleum products that would otherwise move by rail; we have car forwarding companies consolidating less than carload quantities of freight into carload lots which are shipped at less revenue to the railroads than they would otherwise receive; we have large shippers organizing private car lines and renting railroad equipment from car companies and receiving mileage allowances from the railroads that yield a handsome profit and serve as a sort of rebate on the one hand and entail a great quantity of wasteful railroad transportation on the other hand, both at the expense of the railroads, which practices are forced upon the railroads by competition among themselves and their inability to pool special equipment into one great reservoir; then we have the railroads oper-

ating a multiplicity of trains partly loaded in duplicating services over paralleling routes in a mad scramble for the remaining business that still moves by rail.

It requires no statistical compilations of relative movement of traffic to establish the fact that these competitive services have made impressive inroads into the business which formerly moved exclusively by rail. The condition is common knowledge. It is also common knowledge that the competition which the railroads have had to meet from competing forms of transportation has not been a fair competition.

The railroads have had to carry on their fight in the face of regulatory curbs that apply to almost every phase of their operation. Their charges are subject to minimum as well as maximum fixation. Their initiative with respect to their charges is reduced to a minimum by provisions of law that make it necessary to obtain the sanction of the Interstate Commerce Commission in every instance where that body has heretofore entered a rate order before any such rate can be changed. Their rate structure has been practically frozen pursuant to that provision of the law. The wages which they must pay which reflect approximately 60 per cent of their total operating cost, are fixed by law. They must maintain throughout their system a certain minimum of transportation service regardless of the volume of movement. Their operations must be conducted according to a standard of safety that is prescribed and changed from time to time entailing considerable capital investment.

There is hardly any railroad activity or any phase of their business which is not subject to governmental curb of some sort and by the very nature of the situation existing, they are prevented from effecting economies through pooling that could be accomplished by governmental coördination.

Every feature of this regulation is necessary to protect the public interest as demonstrated by experience and none of this regulation can or should be abated or abandoned.

The competition which the railroads have been forced to meet is, generally speaking, an entirely unregulated matter. There is, for example, absolutely no regulation of motor vehicles performing interstate transportation. They can charge any rates that may be necessary to enable them to obtain any particular business in competition with the railroads; and, in order to make rates low enough they can force their labor to work upon terms controlled largely by conditions of supply and demand. They enjoy complete and absolute initiative with respect to their charges which they can change at will to meet the exigencies of competition.

Transportation by boat line and air line is conducted with much the same freedom from curb or regulation. Not only are these other agencies of interstate transportation permitted to operate without any curbs to speak of but they are furnished free of charge by the government with the necessary highway upon which to operate.

It cannot be said, therefore, that the inroads which these competing forms of transportation have made into the business formerly moving by rail, is a demonstration that these other forms of transportation are a more efficient means of transportation from an economic point of view. It is extremely doubtful whether transportation by these other kinds of carriers could be performed at less unit cost than by railroad if they paid labor costs that supported a standard of living equivalent to that of railroad labor and paid tolls reflecting a fair share of the capital cost and maintenance of the highways that they use.

Nevertheless these competing forms of transportation are being allowed to undermine a national system of railroads that has been erected at great cost, in the face of the fact that in case

of war the nation would be primarily dependent upon our railroads as a very essential part of our national defense.

CONSIDER what our situation would be if we were overtaken by another war. Any war, in which this country is likely to be involved, will probably be another world war in which our boundaries will be subject to assault by a composite enemy with an invading force capable of attacking simultaneously on our two coasts with supplementary attacks on one or both borders. Our ability to withstand these assaults will depend upon the degree of efficiency with which we can shuttle great bodies of troops between our two coasts and borders and keep them provisioned and supplied. This means long-haul transportation in large volume quickly performed. For such transportation we have no present substitute for our railroads.

In view of this matter of national defense it is no less than suicidal for the Federal government that is charged under the Constitution with the sole responsibility for providing for the national defense, to any longer countenance this condition of ruthless competition that is undermining the railroads which are obviously one of the most important arms of our national defense.

IN this undirected competition with the railroads by these other agencies of transportation that is being permitted, not only are the railroads being sacrificed but havoc is being wrought in every one of these other forms of transportation to the point that boat lines, air lines, pipe lines, bus and truck lines generally, are all demoralized and thoroughly apprehensive of their future.

Code regulation under the NRA was embraced by certain of the leaders in the various groups who were in a position to control the code organization, as a means of temporary profit at the expense of their fellow code members who have been forced into a scheme fostered and controlled by their stronger competitors. At most this code regulation is temporary and has only served as a stop-gap. The more farsighted leaders in each of these competing groups recognize that Federal coördination is their only salvation.

The boat lines are coming to realize that railroads by relief from the 4th Section granted by the Interstate Commerce Commission can be placed in a position to meet the reduced rates by which the boat lines took away from the railroads tonnage that formerly and traditionally moved by rail. They recognize that the Interstate Commerce Commission will probably look with increasing favor upon relief of this sort in the future.

TO hold the traffic, the boat lines must further reduce their charges which reductions necessarily reduce profits to the vanishing point. The inauguration by the eastern railroads of a general pick-up and delivery service has necessitated a general reduction in trucking charges to meet the resulting competition which has reduced profits in the trucking industry to the danger mark.

The code authorities regulating trucks and the code authorities regulating boat lines are helpless to restore to their members the profits that they have lost through the retaliatory measures undertaken by the railroads in this competitive war. There can be no stabilization between trucks or boat lines regulated by code authorities and railroads regulated by an Interstate Commerce Commission and it is only when all forms of transportation are brought under one supervising authority that stabilization, coördination, and rehabilitation are possible. The leaders in these competing forms of transportation are slowly awakening to this fact.

VIEWED from the standpoint of the national defense it is equally necessary that these other agencies of transportation should not be sacrified in an unnecessary competitive war

waged against them by the railroads in retaliation. Our airways are an important asset to commerce in times of peace but in times of war they will furnish combat personnel and the aviation manufacturers supplying equipment for peace-time operation will provide the plants for supplying combat planes. In future wars motorized vehicles will supply the personnel required to operate the necessary motor transport and the manufacturers supplying motor vehicles for peace-time commerce will be our dependence for furnishing the necessary motor vehicles required in time of war. Similar instances can be multiplied in all lines of transportation. We cannot afford to permit any form of interstate transportation to be sacrificed in this needless competitive war that is in progress.

The difficulty encountered in arousing the public to a proper appreciation of the situation comes largely from the fact that it is enjoying low transportation charges where this ruthless competition is in operation which it is loath to believe are below the cost of service and in assuming that the huge governmental expenditures that have been made for waterways and highways are expenditures that need not be refunded from an economic point of view. The American public, however, is a sporting public. It will support fair play and will respond handsomely when its consciousness of any governmental necessity is properly aroused.

THE problem of the moment is to have a plan ready for adoption when the public conscience is aroused which will best serve the public interest and preserve to the utmost the opportunity for private initiative and profit under our constitutional system.

One of the most important proposals to meet the existing situation is that which has been made by Coördinator Eastman advocating government ownership and operation of the railroads as the only ultimate solution. In advancing this proposal, however, the author has admitted that his proposal is not presently feasible only, however, because government finances at present will not permit of the government's taking on the additional government debt that would be incurred by the acquisition of our railroads.

It must be obvious, however, even upon casual consideration that government ownership and operation of the railroads alone will not meet a situation which demands, primarily, stabilization or coördination of truck or bus with railroad, boat line with railroad, pipe line with railroad, or air line with railroad, and in turn coördination of each with each other.

IF the government owns all of the railroads, stabilization and coördination between railroads can be hoped for in time, but such coördination is secondary. What is primarily required is stabilization and coördination between the competing forms of transportation and manifestly not one whit of such stabilization and coördination can be achieved by the government's taking over and owning only the railroads. If ownership is to be the means to coördination, then government must take over not only the railroads but every other competing agency of transportation.

Under the Eastman findings with respect to government resources, it would be unthinkable for the government to undertake the investment that would be required for it to acquire all of the interstate transportation facilities in the country.

If the government took over only the railroads and left all of the competing forms of transportation in private ownership and operation, some governmental administration of these competing forms of transportation would have to be resorted to as a supplement to the scheme of railroad ownership in order to make the other forms of transportation complimentary to the railroads, by fixing the minimum charges at which these competing forms of transportation might operate in competition with the government operation

by railroad. Otherwise the government-owned and operated railroads would be quickly denuded of their traffic by competitors for whom the government was furnishing and maintaining highways under political pressure at no cost to the private operators.

IN the event that the ownership and operation of the railroads were supplemented by a regulating authority empowered to fix the minimum charges of the competitors of the railroads owned by the government, such regulating authority, because of the fact that any deficit incurred by the government operation would be made up from taxation, would be subjected to irresistible political influence in the fixing of the rate differentials between the railroads on the one hand and the competing forms of transportation on the other. Every end of true economy in transportation would be defeated by this political pressure and eventually deficits from railroad operations would be piled up that would be prohibitive. Instead of restoring to the rails that proper portion of traffic that the national interest demands to afford economic and efficient railroad transportation, the resulting differentials under political pressure would be made to favor the private operation in competition with the government rail operation by affording the private operation a rate differential that would divert further traffic from the rails. The unit cost of rail operations would increase as its declining traffic was bled from it, leading necessarily to a correspondingly higher level of rail rates.

IF all of the competitors including the rails remain privately owned and operated, any governmental authority empowered to fix differentials will not be subject to such political pressure because any deficits incurred cannot be dissolved by taxation. Government ownership of the railroads would therefore only serve to defeat the coördination by an independent governmental authority which obviously must be set up in any event as a supplement to government ownership of railroads.

If government ownership of railroads cannot of itself bring about the necessary coördination between competing forms of transportation and a supplementary governmental authority is required, wherein is government ownership of railroads itself of any utility at all?

Certainly government ownership of railroads is not necessary in order to effect every coördination between railroad operations that might be brought about under government ownership. A transportation coördinator can require all pooling of railroad services that could be obtained through coördination under government ownership provided the resulting divisions of revenues to participating carriers is compensatory for the contribution made to the joint enterprise.

WHAT this just compensation must be is in the final analysis a judicial question to be determined by the courts in case of dispute and as long as all such actions of a transportation administrator are made subject to judicial review, his field of coördination is coextensive with that of a director general under government ownership and operation.

Likewise all other economies of operation that can be obtained by a director general under government ownership of the railroads, can be equally effected by a transportation administrator under government planning.

On the other hand it must be admitted by the advocates of government ownership of railroads that such operation affords no incentive for private initiative or profit which are the mainsprings of all efficient business activity. Instead of affording any such incentive, government ownership fosters administration that is subservient to political influence which is the enemy of efficient and economical operation.

IT must be admitted, however, that government ownership and oper-

ation of the railroads is a matter that cannot be lightly dismissed if for no other reason than that it offers the most intriguing potentialities politically. In the hands of demagogues this proposal must necessarily have an almost irresistible public appeal. It is one of those propositions that in spite of the fact that it has not a single merit to justify it, nevertheless, possesses those political possibilities that make it the much sought vehicle on which the clever politician rides to power.

The potentialities favorable to the adoption of the idea of government ownership of the railroads are further enhanced by a suppressed hope on the part of the large owners of railroad securities that in case their properties are taken over under a régime of government ownership, they can force through court action a price settlement based upon the physical valuation of railroads that has about been completed by the Interstate Commerce Commission, which valuation is greatly in excess of the market value of these securities at this time and probably for a long time to come. Government ownership of railroads is something more, therefore, than the academic proposal of such a nonpolitically minded man and such a serious student of transportation as Mr. Eastman.

If a planned economy can constitutionally of itself bring about the desired coördination between the competing forms of transportation and can through pooling and rerouting schemes eliminate wasteful railroad transportation to the same extent and degree that such waste could be rectified under government ownership of railroads, and if under a system of rate differentials, stabilization at a minimum cost to the shipping public can be achieved, where is the utility of government ownership as compared with the situation under a planned economy which would maintain the transportation industry as an open field for private initiative and profit with the resulting efficiency that must necessarily flow from a directed competition?

The outstanding feature of government planning is the separation between the administrative and judicial functioning. This feature of the plan is in direct contrast to the commission form under which the same governmental authority is first the administrator and then the judge of the private rights that may be violated by the administrative rule prescribed.

When the Interstate Commerce Commission was created in 1887 it was an innovation in governmental forms that was adopted in lieu of an agency with a single administrative head solely because it afforded a bipartisan administration that would "keep the railroads out of politics." It was recognized that an administration with a single head would be more efficient, but it was thought that the advantage of bipartisan administration under the commission form would outweigh the relative loss in efficiency. Since that time we have had another innovation in governmental forms represented by the Comptroller General, which has demonstrated that an administrative agency headed by a single executive can be made equally nonpolitical. In the light of this later experience, the board or commission form has lost its chief, if not its only, reason for being. It is no longer necessary to have a plan of government administered by a commission or board in order to obtain a nonpolitical executive policy.

Not only has the commission or board form become obsolete, but it is repugnant in its actual operation to the fundamental principle of checks and balances upon which our whole theory of government is based. Under the commission or board form, the board or commission is first the administrator and then the judge of the private rights which its administrative policy may have violated. And as far as the shippers' private rights are concerned under the commission or board form as it has been applied by the

Supreme Court, the board's decision as judge is final. The commission or board on the one hand as administrator is charged with the preservation of carrier revenues on a basis that it will yield a certain required annual return, and on the other hand as judge it is charged with passing upon the intrinsic reasonableness of the same rate level upon the suit of a shipper charging extortion.

The decision of a commission or board on a shipper's suit under these circumstances is as much of a governmental travesty as trial by ordeal.

It would be just as logical to abolish the office of President of the United States and turn over all of his administrative duties to the Supreme Court and then expect the Supreme Court to render a disinterested and impartial judgment upon any issue of private rights growing out of the administrative policies it had adopted.

The board or commission form as compared with the administrator form is inherently and necessarily inefficient. Under the board or commission form every administrative decision can be reached only after debate and discussion in conference. If the decision is reached in any other way it does not reflect the deliberative judgment of the whole after conference but simply becomes a poll of individual viewpoints based on varying degrees of information concerning the subject matter. Every board or commission functions in conference with one member usually better posted than his fellow members as to the facts of the particular matter who, because of such superior knowledge, endeavors to educate his fellows to his viewpoint by discussion and argument. Such debate means delay.

In every board or commission there seems always to emerge one member who, because of force of personality or superior knowledge of the subject matter, inevitably dominates its deliberations and more or less controls its policy. This leadership just as certainly breeds its own opposition, oftentimes with no sounder basis than personal envy or jealousy. Opposing points of view crystallize, become fixed and dogmatic, all of which serves only to prolong the conference delays. No such delays are possible under the administrator form. Furthermore, in the board or commission form there is a lack of personal responsibility because of divided accountability which tends toward inefficiency whereas under the administrator form personal accountability cannot be escaped.

From the experience of the Interstate Commerce Commission it would seem that the commission or board form would prove physically incapable of handling the job of administration presented. That commission with its jurisdiction confined to railroads with a very limited jurisdiction over pipe lines and boat lines, has repeatedly and publicly complained that it was being overworked under its present duties and has accordingly asked to be relieved of certain of its duties with respect to railroads.

How could such an organization that is already overworked extend itself to handle the additional jurisdiction over air lines, pipe lines, motor vehicle lines, and boat lines that would be just as comprehensive in each case as its jurisdiction over the railroads, which jurisdiction itself would be considerably enlarged?

Government planning predicated upon these considerations contemplates both an administrator and a rate tribunal each independent of the other but both housed under the same roof and with every facility afforded for a hearty coöperation in their respective fields in which there will be no overlapping or conflict in functioning.

Coming to the matter of the constitutionality of a planned economy for interstate transportation, it is fundamental in government that the state is under an obligation to provide public transportation as well as a postal service and all other public utilities. This govern-

mental responsibility can be discharged either by public ownership and operation or by franchise. If the state can own and operate the whole of the transportation industry, it can certainly function as a partner therein.

In so far as interstate transportation is concerned the Federal government alone is sovereign; it is the state. The original states that formed the Federal state had no extraterritorial power or sovereignty. The powers of each state were and are limited to its geographical boundaries. No individual state had or has any power to own and operate any public interstate transportation facility and such operations cannot be enfranchised by any individual state. In fact there was no sovereign power to perform or enfranchise these operations until the original states by concert of action set up a superstate with concurrent sovereign powers coextensive with their consolidated boundaries. The Federal state so set up would have had plenary sovereign power over interstate transportation without any specification or delegation of such power to it in the Commerce Clause of the Constitution simply because it was the inherent prerogative of the superstate and because the power was reposed nowhere else and had to receive expression through some governmental agency and there was no other than this Federal state through which it could become vital.

Specific delegation or specification of the power is made, however, in the Constitution, in the Commerce Clause, and inasmuch as no part of the power is delegated to any other sovereign or reserved to the original states, or to the people, the powers delegated must comprehend the complete sovereign and plenary power and obligation inherent in every sovereign state with respect to public transportation within its borders.

The constitutional power of the Federal government to own and operate every and all agencies of public interstate transportation cannot, therefore, be questioned. Likewise, if the Federal government can own and operate all elements in the interstate transportation industry its right to participate therein as a partner is equally beyond question.

The Federal government as a matter of fact has been coöperating with the interstate transportation industry in times past as a limited partner. It has made vast grants of public lands to certain interstate railroads to aid and assure their construction; it has invested hundreds of millions of dollars in inland and coastwise waters to provide water highways upon which the water carriers might operate; it has provided other hundreds of millions of dollars for the building of highways on which the vehicular carriers might operate; it has provided millions in mail subsidies to air lines which could not have operated otherwise; it has recently loaned hundreds of millions of dollars to railroads to tide them over during the depression and to enable them to carry on building programs designed to achieve more efficient operation. These are but a few of the participations by the Federal government as a partner in the transportation industry. Its participation, however, heretofore has always been as a limited partner; as a partner contributing capital to the various and competing elements in the enterprise without any endeavor to coördinate these participations. One would almost believe that the government's participation in the transportation industry was one that by design was intended not to let the left hand know what the right hand was doing.

Partnership is defined in law as a relation subsisting between persons who combine their services, property, and credit for the purpose of conducting business for their joint benefit.

The Federal government has contributed its property and its credit to the transportation industry but has withheld its services as a directing coördinator. Government planning simply provides the governmental form by which government may contribute its services as a